City of Lafayette Staff Report

For: City Council

By: Christine Sinnette, Senior Planner

Date Written: September 30, 2008

Meeting Date: October 9, 2008

Subject: Joint City Council/Planning Commission Study Session
Eastern Deer Hill Road General Plan and Zoning amendments (GP03-04/RZ02-04)

Planning Division staff have been working on City-initiated General Plan and zoning amendments (GP03-04 and RZ02-04) for seven properties in the Eastern Deer Hill Road area. See Attachment 1 – Parcels and Ownership and Attachment 2 – General Plan and Zoning Designations. The purpose of this joint City Council/Planning Commission meeting is to provide an update on the status of the amendments.

Since initiation of GP03-04 and RZ02-04 in November 2004, staff has described the project as follows.

> GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/ Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.
>
> RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

As can be seen in Attachment 3 -- Chronology, the Planning Commission has directed preparation of studies and conducted numerous public hearings on GP03-04 and RZ02-04 with the goal being to provide a final project description specifically identifying which properties are to be included in the amendments and what the proposed General Plan and zoning designations should be. At their meeting of April 17, 2008, the Planning Commission voted not to change the zoning of parcel 4 and proposed a zoning change of LR-10 for parcel 21. After numerous other motions for possible zoning designations failed to carry, the proposed General Plan and zoning amendments for the other five parcels remain unresolved. In addition to the Chronology, staff reports, minutes, and public correspondence from various Planning Commission meetings is provided for additional background.

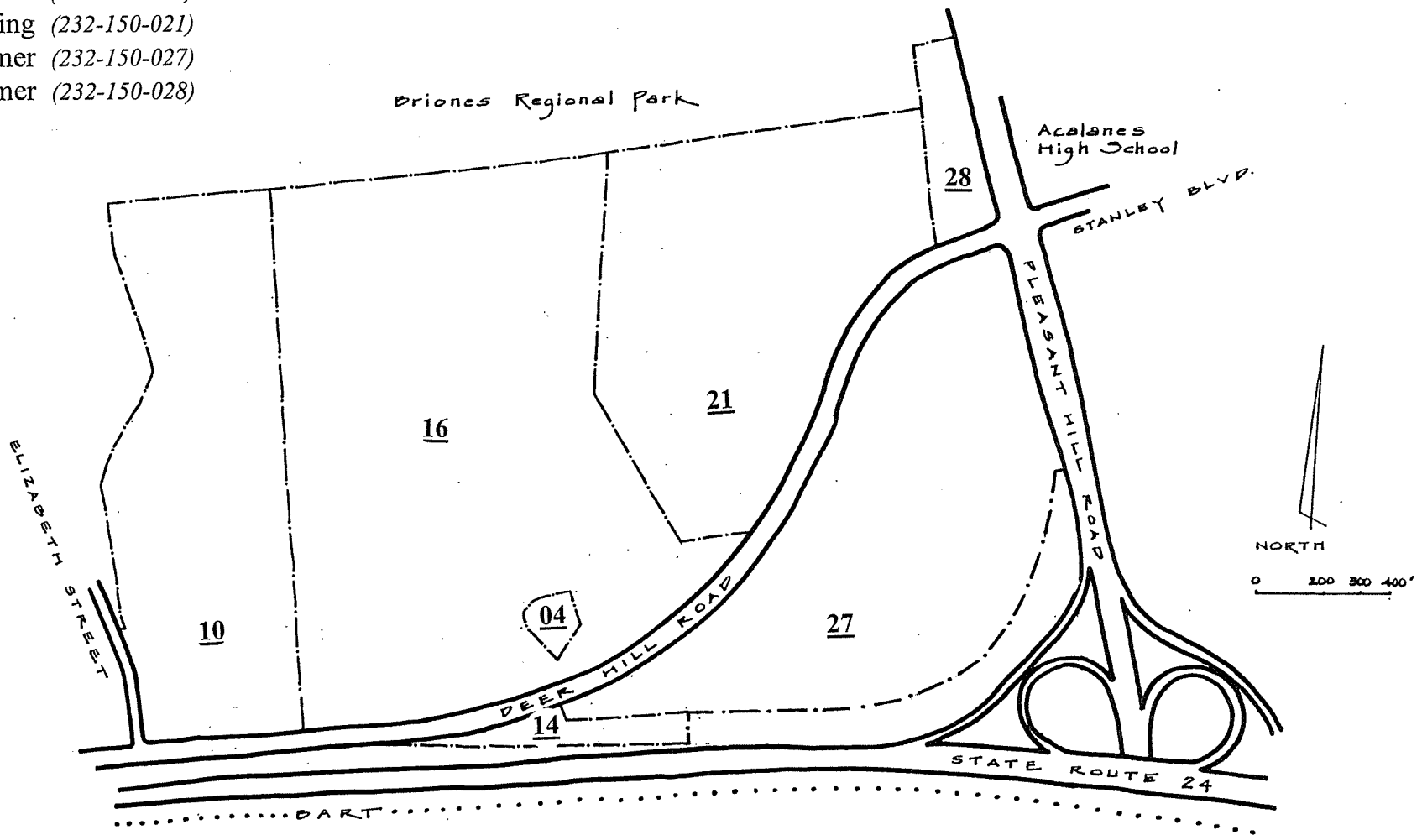
Staff Recommendation

Discuss and direct staff.

Attachments

1 Eastern Deer Hill Road Parcels and Ownership
2. Current General Plan and Zoning Designations
3. Chronology for Eastern Deer Hill Road General Plan and Zoning Amendments
4. Staff Report and Minutes from November 18, 2004 Planning Commission Meeting
5. Minutes from January 6, 2005 Planning Commission Meeting
6. Minutes from February 3, 2005 Planning Commission Meeting
7. Minutes from September 7, 2006 Planning Commission Meeting
8. Staff Report and Minutes from November 15, 2007 Planning Commission Meeting
9. Staff Report, Minutes, and Public Correspondence from February 21, 2008 Planning Commission Meeting
10. Staff Report, Minutes, and Public Correspondence from March 20, 2008 Planning Commission Meeting
11. Staff Report, Minutes, and Public Correspondence from April 17, 2008 Planning Commission Meeting
12. Eastern Deer Hill Opportunities and Constraints Analysis *(available under separate cover)*

04 Naglicki *(232-140-004)*
10 Dettmer *(232-140-010)*
14 Caltrans *(232-140-014)*
16 Dettmer *(232-140-016)*
21 Holding *(232-150-021)*
27 Dettmer *(232-150-027)*
28 Dettmer *(232-150-028)*

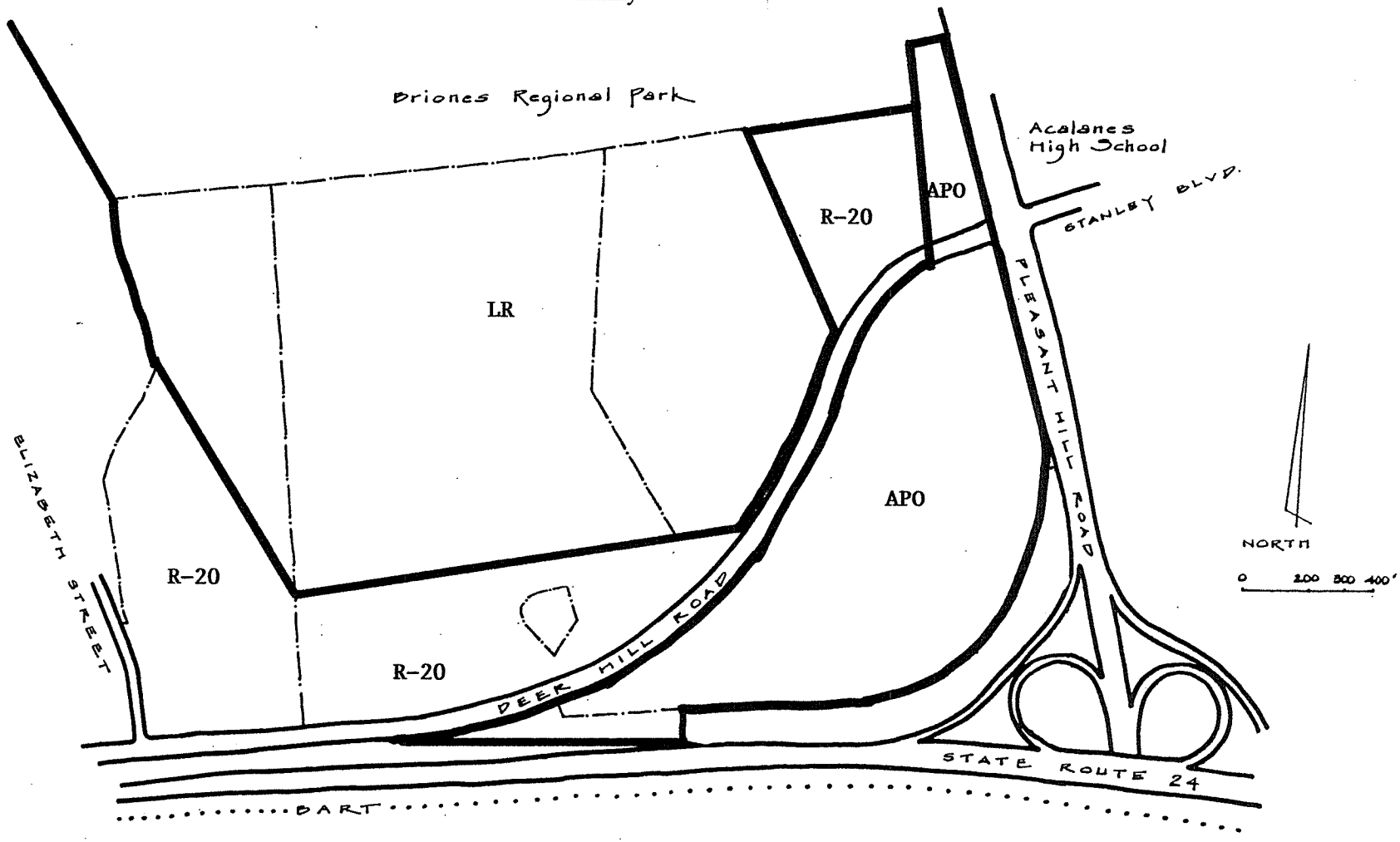


EASTERN DEER HILL ROAD

Parcels and Ownership

ATTACHMENT 1

Zoning	General Plan
LR	Rural Residential Single Family
R-20	Low Density Single Family
APO	Administrative/Professional Office/Multi-family



EASTERN DEER HILL ROAD

ATTACHMENT 2

Chronology of Eastern Deer Hill Road General Plan and Zoning Amendments

February 24, 2003 — The City Council directs staff to initiate a General Plan amendment for the Eastern Deer Hill Road area.

August 2003 — Staff began preparation of the General Plan Amendment but asked for clarification from the City Council on which specific properties to include. The minutes of the City Council meeting of August 11, 2003 state the following:

Mayor Federighi said it is clear they are looking at all seven parcels, but the Council disagrees on what the ultimate zoning designation should be. Ms. Merideth suggested directing staff to look at all seven parcels. Staff can bring back options to be heard by the Planning Commission who can then make a recommendation to the Council. A first scenario could be every parcel is LR. Another scenario could be a suggestion for Parcel 1 depending upon its size, something for Parcel 4 where the line is, how many potential single-family units should be on the property, etc.

Councilmember Tatzin confirmed it would be a Council-initiated General Plan amendment. Ms. Merideth said the Council was initiating a General Plan amendment change tonight, sending it onto the Planning Commission, and that staff would do an analysis. However, she clarified that staff has not concluded on how it would be presented, either with options or with a proposal with alternatives, or some other way.

She [Ms. Merideth] said staff would like a General Plan amendment for all seven properties, with the Planning Commission to make a recommendation, and with a view toward changing the APO parcels to residentially zoned parcels.

ACTION: It was M/S/C (Tatzin/Horn) to direct staff to initiate a General Plan amendment for the seven parcels as outlined in the Eastern Deer Hill Road area and that parcels with APO zoning be changed to residential zoning. Vote: 4-0-1 (Samson absent).

November 18, 2004 — Planning Commission conducts first public hearing on GP03-04/RZ02-04 as described below.

GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The

ATTACHMENT 3

Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

January 6, 2005 — Planning Commission conducts a public hearing. At the meeting, a majority of the Commissioners expressed concern about moving forward with GP03-04/RZ02-04 without additional information on the physical characteristics of the properties and an assessment of their development potential. The Commission directed staff to prepare a preliminary scope of work and budget for a consultant to prepare an opportunities and constraints analysis (OCA) for the seven Deer Hill Road properties.

February 3, 2005 — Planning Commission holds a public hearing where staff presents a scope of work and budget for a consultant to prepare an OCA. The Commission votes to forward the Commission's recommendation to the City Council for preparation of an OCA prior to any further action on GP03-04/RZ02-04.

March 15, 2005 — City Council conducts a public hearing to consider preparation of an OCA. The City Council votes to provide $40,000 from the General Fund for the preparation of the OCA.

September 7, 2006 — Planning Commission conducts a public hearing where it reviews the OCA prepared by MHA Consulting and considers staff's request to decide which specific properties within the Easter Deer Hill Area should be included in the General Plan and rezoning applications and what the designations should be. Further discussion on GP03-04/RZ02-04 is continued to allow staff to respond to Planning Commission requests for more information related to a scope of work and estimated cost for a consulting civil engineer to calculate the average slope of specific properties in the study area and a scope of work for conceptual design studies for parcels 27 and 28 (1175 Pleasant Hill Road and 3233 Deer Hill Road, respectively), including bulk and mass studies and circulation and traffic constraints.

October 19, 2006 & November 16, 2006	Staff provides scopes of work for average slope calculations and conceptual development studies to the Planning Commission at a public hearing. On November 16, the Commission directs staff to proceed with requests for proposals for the two studies. (The $30,000 needed to prepare the studies is included in the Planning Services Division consulting services budget.)
November 15, 2007	As directed by the Planning and Building Services Manager, staff provides the Planning Commission with a copy of the proposal by Design, Community & Environment to prepare conceptual development studies for parcels 27 and 28. The Planning Commission votes to rescind its prior direction to staff for preparation of conceptual development studies.
November 21, 2007	Martin Lysons of Gagen McCoy files a letter on behalf of Anna Maria Dettmer appealing the Planning Commission's November 15 decision.
January 14, 2008	City Council conducts a public hearing on the appeal by Anna Maria Dettmer and votes to deny the appeal and uphold the Planning Commission's decision to rescind the preparation of conceptual development studies.
February 21, 2008	Planning Commission conducts a public hearing where it reviews the results of the average slope data prepared by Schell & Martin, Inc. at the request of the Planning Commission. Staff suggests that the Commission consider LR-5 zoning for the properties with split zoning and MRP – Multi-family Residential/Professional Office, One-story District for properties fronting on Pleasant Hill Road. The Planning Commission continues discussion to March 20 and asks staff to prepare an LR-5 analysis and provide more information for the properties fronting on Pleasant Hill Road.
March 20, 2008	Planning Commission conducts a public hearing where it considers LR-5, LR-10, and MRP zoning. A straw vote is conducted on the possible zoning designations for parcels 4, 10, 16, and 21. On a vote of 4 to 3 in favor, the Commission settles on no change to the R-20 zoning of parcel 4 and that a zoning change of LR-10 for parcels 10, 16, and 21 be considered. The Commission continues discussion on parcels 14, 27, and 28 to the meeting of April 17.
April 17, 2008	Planning Commission conducts a public hearing where it considers LR-10, MRP and MRT (Multi-family Residential Townhouse District) zoning. By a majority vote, the Commission proposes no change to the R-20 zoning of parcel 4 and proposes a zoning change of LR-10 to parcel 21. After numerous other motions for possible zoning designations fail to carry, the Commission leaves General Plan and zoning amendments for the remaining five parcels unresolved.

Item 7C

City of Lafayette Staff Report

For: Planning Commission

By: Christine Sinnette, Senior Planner

Date Written: November 10, 2004

Meeting Date: November 18, 2004

Subject: GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

BACKGROUND

On January 26, 2004, the City Council approved a work plan for the Planning Services Division consisting of twenty long-range studies, the majority relating to housing element programs. In June 2003, at the request of Planning Commissioner Mark Mitchell, the Planning Commission considered the option of adding the Eastern Deer Hill Road General Plan amendment (GPA) to this year's work plan. The Commission made a unanimous recommendation to the City Council to add the Eastern Deer Hill Road GPA to the work plan. On June 28, 2004, the City Council amended the Planning Services Division work plan to include the Eastern Deer Hill GPA.

The Eastern Deer Hill GPA had previously been on the Division's 2003 work plan. In August 2003, staff began preparation of the Eastern Deer Hill GPA but asked for clarification from the City Council on which specific properties to include. At their meeting of August 11, 2003, the City Council took the following action.

ACTION: It was M/S/C (Tatzin/Horn) to direct staff to initiate a General Plan amendment for the seven parcels as outlined in the Eastern Deer Hill Road area and that parcels with APO zoning be changed to residential zoning. Vote: 4-0-1 (Samson absent).

Planning staff was unable to pursue the General Plan amendment and rezone process due to an increase in current planning applications in 2003.

As currently proposed, GPA03-04 and RZ02-04 would reclassify two properties, APN 232-140-014 (State of California) and APN 232-150-027 (Dettmer) from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and rezone them from APO to LR-10 and reclassify APN 232-150-028 (Dettmer) from Administrative/Professional/Office/Multifamily Residential to Low Density Single Family and rezone it to R-20. However, during staff's research into the evolution of the City's desire to consider General Plan and zoning changes for the Eastern Deer Hill area, it was noted that two other options for the seven properties in this area were discussed during the public hearings on the recently updated General Plan. The current proposal and the two possible options are shown in Attachment C.

STAFF COMMENTS

The purpose of this public hearing is for the Planning Commission to provide direction to staff on which specific properties within the Eastern Deer Hill Area should be included in the General Plan Amendment and rezoning applications and what the proposed designations should be. The City Council's direction based on their approved motion of August 11, 2003 appears to be as currently described by staff. However, given the discussions that occurred during the public hearings on the General Plan update, the Planning Commission may wish to take public testimony and engage in discussion on one of the other two options or develop new options.

Once the project description for the GPA and rezone are formalized, staff will prepare the appropriate environmental documents and bring the applications back to the Planning Commission for one or more public hearings and for a recommendation to be forwarded to the City Council for final consideration on the applications.

PUBLIC NOTIFICATION

On October 18, 2004, owners of the seven properties were sent a letter outlining GPA03-04 and RZ04-04 and the two options. On November 5, 2004, notice of this public hearing was mailed to property owners within 500 feet of the Eastern Deer Hill Road project boundary, the Lafayette Homeowners Council, Springhill Valley Association, Springbrook Neighborhood Association, Northridge Park Homeowners Association, Brown Avenue Homeowners Association, and Quandt Area Homeowners Association. A legal ad was published in the Contra Costa Sun on November 3,2004.

ATTACHMENT 4

STAFF RECOMMENDATION

Staff's recommendation is that the Planning Commission open the public hearing on GPA03-04 and RZ04-04 and provide direction for staff. To provide additional background, the following attachments are included with this staff report. There is also correspondence from Anthony Lagiss, the former owner of four of the subject properties.

ATTACHMENTS

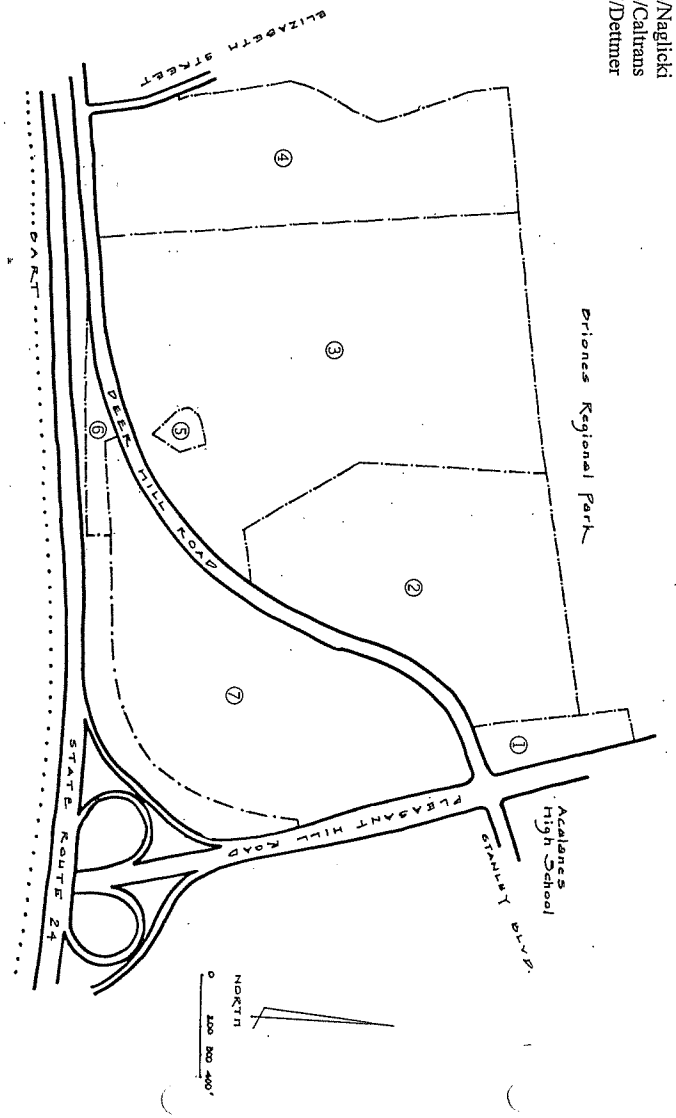
A. Eastern Deer Hill Road Parcels and Ownership
B. Current General Plan and Zoning
C. Table of Project Description and Two Options
D. Background Chronology of Eastern Deer Hill Road
E. Minutes of the City Council Meeting of August 11, 2003
F. Correspondence from Anthony Lagiss, stamped received November 5, 2004

ATTACHMENT A

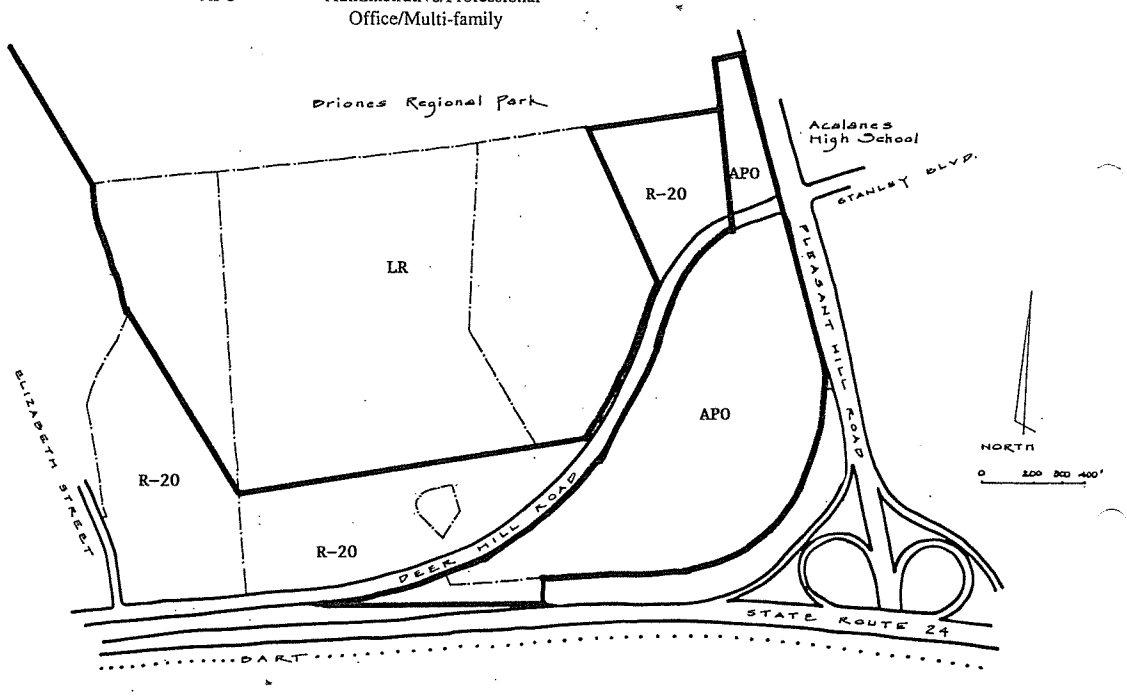
EASTERN DEER HILL ROAD

Parcels and Ownership

① 232-150-028/Dettmer
② 232-150-021/Holding
③ 232-140-016/Dettmer
④ 232-140-010/Dettmer
⑤ 232-140-004/Naglicki
⑥ 232-140-014/Caltrans
⑦ 232-150-027/Dettmer



Zoning	General Plan
LR	Rural Residential Single Family
R-20	Low Density Single Family
APO	Administrative/Professional Office/Multi-family



EASTERN DEER HILL ROAD

Current General Plan and Zoning

ATTACHMENT B

TABLE 1

PROJECT DESCRIPTION AND TWO OPTIONS

GP03-04, RZ02-04 CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties located on Deer Hill and Pleasant Hill roads as follows:

Properties	Property Owner	Property Size	Current General Plan	Current GP Density	Proposed General Plan	Proposed GP Density	Current Zoning	Proposed Zoning
APN 232-140-014	California	59,241 s.f. 1.35 acres	Administrative/Professional/ Office/Multifamily Residential	47	Rural Residential Single Family	1	APO	L-R-10
APN 232-150-027	Dettmer	969,776 s.f. 22.26 acres	Administrative/Professional/ Office/Multifamily Residential	770	Rural Residential Single Family	2	APO	L-R-10
APN 232-150-028	Dettmer	83,330 s.f. 1.91 acres	Administrative/Professional/ Office/Multifamily Residential	66	Low Density Single Family	4	APO	R-20

The Planning Commission and City Council may also consider the following two options:

Option1

Properties	Property Owner	Property Size	Current General Plan	Current GP Density	Proposed General Plan	Proposed GP Density	Current Zoning	Proposed Zoning
APN 232-140-014	California	59,241 s.f. 1.35 acres	Administrative/Professional/ Office/Multifamily Residential	47	Rural Residential Single Family	1	APO	L-R-10
APN 232-150-027	Dettmer	969,776 s.f. 22.26 acres	Administrative/Professional/ Office/Multifamily Residential	770	Rural Residential Single Family	2	APO	L-R-10
APN 232-150-028	Dettmer	83,330 s.f. 1.91 acres	Administrative/Professional/ Office/Multifamily Residential	66	Rural Residential Single Family	1	APO	L-R-10

ATTACHMENT C

ATTACHMENT D

Background Chronology of Eastern Deer Hill Road

April 19, 2001	Based on a recommendation from GPAC, the Planning Commission voted 4-2 to recommend to the City Council that the General Plan designation for the Eastern Deer Hill Road area be changed to Rural Residential.
January 2002	As part of the discussion about the revised General Plan in January 2002, the City Council approved staff's recommendation that the eastern Deer Hill area be the subject of further planning before a decision on land use designations was made.
February 2002	The Council confirmed that further planning should be done for this area by including the adoption of an Eastern Deer Hill Road Specific Plan in its FY2002/2003 goals.
July 2002	Planning staff sent out requests for proposals to consultants for the preparation of the specific area plan.
September 2002	Planning staff recommended to the Council that WRT be selected for preparation of the specific plan. WRT's cost to prepare the specific plan was $146,213. The Council subsequently asked staff to look at less expensive options which were presented to the Council later that month.
October 2002	After reviewing seven options ranging from modifying the consultant's scope of work for the specific plan, hiring a contract planner, to removing the specific plan as a Council goal, the Council decided to defer consideration of the specific plan to their goal setting session for 2003/2004.
October 28, 2002	City Council adopts the revised General Plan including the following: • Goal LU-13: Ensure that the Eastern Deer Hill Road area near the section of Pleasant Hill road is developed, where development is appropriate, in a manner consistent with Lafayette's community identity. • Policy LU-13.1: Preserve and enhance the semi-rural single-family residential character north of Deer Hill Road where not adjacent to Pleasant Hill Road. • Policy LU-13.2: Consider options for development south of Deer Hill Road and north of Deer Hill Road where adjacent to Pleasant Hill Road. • Program LU-13.2.2: Prepare through community planning process as Eastern Deer Hill Road Specific Plan.
February 2003	At its goal setting session for 2003/2004, the Council decided not to include preparation of the Deer Hill Road Specific Plan as a goal due to budget constraints and other significant projects taking staff's time. However, staff was asked to bring back an agenda item to discuss whether the land use designation within the planning area should be changed.

Option 2

Properties	Property Owner	Property Size	Current General Plan	Current GP Density	Proposed General Plan	Proposed GP Density	Current Zoning	Proposed Zoning
APN 232-140-014	California	59,241 s.f. 1.35 acres	Administrative/Professional/ Office/Multifamily Residential	47	Rural Residential Single Family	1	APO	L-R-10
APN 232-150-027	Dettmer	969,776 s.f. 22.26 acres	Administrative/Professional/ Office/Multifamily Residential	770	Rural Residential Single Family	2	APO	L-R-10
APN 232-150-028	Dettmer	83,330 s.f. 1.91 acres	Administrative/Professional/ Office/Multifamily Residential	66	Rural Residential Single Family	1	APO	L-R-10
APN 232-140-004	Naglicki	21,780 s.f. .5 acre	Low Density Single Family Residential	1	Rural Residential Single Family	1	R-20	L-R-10
APN 232-140-010	Dettmer	776,239 s.f. 17.81 acres	Low Density Single Family Residential and Rural Residential Single Family	17	Rural Residential Single Family	1	R-20	L-R-10
APN 232-140-016	Dettmer	1,661,378 s.f. 38.13 acres	Low Density Single Family Residential and Rural Residential Single Family	29	Rural Residential Single Family	3	R-20	L-R-10
APN 232-150-021	Holding	904,044 s.f. 20.75 acres	Low Density Single Family Residential and Rural Residential Single Family	14	Rural Residential Single Family	2	R-20	L-R-10

At the City Council meeting of February 24, 2003, staff offered three options for the Council to consider; 1) Do nothing now and reconsider preparation of a specific plan next year, 2) Initiate a General Plan amendment to change the current APO designations to LR and revise the General Plan goals, policies, and program to support this change in density, and 3) Direct staff to prepare a specific plan. The City Council voted to pursue option 2 and have staff return with a specific proposal for a General Plan Amendment (see City Council minutes of February 24, 2003). This action was added to the Planning Division work plan for 2003/2004.

August 2003

Staff began preparation of the General Plan Amendment but asked for clarification from the City Council on which specific properties to include. The minutes of the City Council meeting of August 11, 2003 state the following:

City Manager Falk said staff would prefer a motion, and said the question before the Council was how many and which lots would the Council like studied, not what zoning the Council would like them to be.

Mayor Federighi said it is clear they are looking at all seven parcels, but the Council disagrees on what the ultimate zoning designation should be. Ms. Merideth suggested directing staff to look at all seven parcels. Staff can bring back options to be heard by the Planning Commission who can then make a recommendation to the Council. A first scenario could be every parcel is LR. Another scenario could be a suggestion for Parcel 1 depending upon its size, something for Parcel 4 where the line is, how many potential single-family units should be on the property, etc.

Councilmember Tatzin confirmed it would be a Council-initiated General Plan amendment. Ms. Merideth said the Council was initiating a General Plan amendment change tonight, sending it onto the Planning Commission, and that staff would do an analysis. However, she clarified that staff has not concluded on how it would be presented, either with options or with a proposal with alternatives, or some other way.

She [Ms. Merideth] said staff would like a General Plan amendment for all seven properties, with the Planning Commission to make a recommendation, and with a view toward changing the APO parcels to residentially zoned parcels.

ACTION: It was M/S/C (Tatzin/Horn) to direct staff to initiate a General Plan amendment for the seven parcels as outlined in the Eastern Deer Hill Road area and that parcels with APO zoning be changed to residential zoning. Vote: 4-0-1 (Samson absent).

Councilmember Tatzin referred to the Triple Flip and said in the fourth year the half cent sales tax will be generating a lot more money than the property tax and asked how much money would the City receive. Mr. Cheslog could not respond. Mayor Federighi noted the idea was to be revenue neutral.

Vice Mayor Horn said schools would be hurt, and Mr. Cheslog noted that for this year they were able to meet Proposition 98 guarantee. This is where the State will see some guarantees to education, and he said it took a lot of effort to save it from falling on local government.

Rachel Weinstein, representative to Assemblywoman Loni Hancock, said Assemblywoman Hancock sends her congratulations on the bridge and hopes to see the Council in person soon. Assemblywoman Hancock wanted to underscore the need for structural reform, noted no one was happy with a budget which leaves California with a $7.9 billion deficit for the coming year when all the "fat" had already been cut off. Assemblywoman Hancock felt there was an earlier proposed budget by the Democrats which had a more balanced approach of making substantial cuts, restoring a few revenues, and leaving California without a deficit in the years to come.

She spoke of structural problems, stating California was one of three States in the nation that requires a two-thirds vote to pass a budget which raises the question of how this reflects our majority rules belief. Secondly, finding a compromise in the season was even harder than past years because there were new district lines. The new lines left us with more partisanship and compromise. Finally, she said Assemblywoman Hancock has reflected on how much continuity of leadership can mean. She said the historic budget deficit was handled by 80 Assemblymembers, 39 of which were brand new to Sacramento. Assemblywoman Hancock has serious long term concerns that she has shared with Senator Torlakson and is convinced that if California is to remain a State worth living in, it must re-examine the two-thirds requirement, term limits, and how district lines are drawn. She thanked the Council for the recognition, for inviting her to discuss the State budget, and said Assemblywoman Hancock hoped to visit with elected officials in the near future.

Councilmember Tatzin asked what Assemblywoman Hancock's opinion was about how to handle a budget in a State when the level of economic activities was down, when fewer people were working and fewer people were helping pay taxes to fund State activities. Ms. Weinstein said Assemblywoman Hancock supported the Democratic proposal earlier on which would have reinStated three revenue sources; the vehicle license fee, the upper bracket income tax for those making over $300,000 per year, and the new half cent sales tax out of the deficit bond.

Vice Mayor Horn said regarding term limits and newcomers, he felt the bulk of those coming into state government had a lot of experience, noting many had come from local councils or county supervisor positions and are politicians. He said he also did not feel term limits drive us where we are.

7. OLD BUSINESS:

A. Eastern Deer Hill Road General Plan Amendment
Recommendation: Discuss and Direct Staff

Senior Planner Christine Sinnette said earlier this year the Council approved the Planning Department Work Plan which included preparation of General Plan amendments for the Eastern Deer Hill area. As staff began the process and began looking through minutes and staff reports from earlier meetings where the Council made a decision not to have a specific plan prepared

but to initiate the General Plan amendments, there was confusion on which properties would be included in the proposed amendments.

Staff is asking Council to clarify which properties should be included within the amendment. The geographic area of the Eastern Deer Hill area consists of seven properties, six in private ownership and one owned by Caltrans, all of which have mixed zoning.

Councilmember Tatzin confirmed with Ms. Sinnette that there were at least a couple of parcels north of Deer Hill Road that were zoned R-20 in the south ends and LR in the northern portions, and the Council could discuss splitting some of the other parcels between the two zones. He said in looking at the northeast corner site, the site was narrow, so if the parcel were to be made LR, how would the process be handled with side yard setbacks? Ms. Sinnette said if the zoning was such that a standard project could not be built, staff would require a variance for the proposal.

Public Comments:

Guy Atwood, 3345 Springhill Road, reiterated that it was clear that the Council voted to include all of the parcels because he recommended that the Council might want to consider one of the parcels for a different zoning and he was ignored. He said GPAC also voted unanimously (except for him) to have all parcels included in the LR. He said the 1974 General Plan also called for those parcels to be LR. Councilmember Tatzin asked Mr. Atwood which parcel he did not want included. Mr. Atwood noted it was the parcel furthest to the west, used as a parking lot with a steep hill on the northern end. He felt the flat portion could have something with a different zoning, like R-20.

Councilmember Tatzin said when he made the motion in March, the Council did not decide what to do with that parcel, and felt the Council was going to do a General Plan amendment with no firm decision on which parcels would be included.

Councilmember Anduri referred to the northeast parcel and asked when GPAC looked at that parcel, how did they anticipate that would be developed or not if it were zoned LR? Mr. Atwood said he did not think anyone had a clear idea on how it would be developed. Perhaps the best use might be anywhere from parking to a minor park area, or the City might also want to acquire it to provide some amenity, but there were very limited options for the parcel. He said the prior gas station was a non-conforming use, and actually was not successful in business.

Mayor Federighi referred to northeast parcel and asked why GPAC wanted it LR, and Mr. Atwood said he agreed and in one sense, it is a relatively insignificant parcel in terms of the total area. The Council can at any point in time decide they might want to take a look at it. But to spend a lot of money, time and effort it may not be so beneficial. He felt possibly the best thing to do was to zone it according to whatever plan comes in, but he felt it was not significant in terms of the overall impact to the community.

Mayor Federighi said she did not think the property should be rezoned, said there might be some disagreement as to what the vote was, and felt Councilmember Anduri felt Option 2 included all of the parcels, while Councilmember Tatzin was less specific.

Councilmember Anduri asked Councilmember Tatzin what he meant by his motion. Councilmember Tatzin said the motion was that staff come to us and ask us whether to do a study or not, and whether to change parcels to LR that were not. The motion did not enumerate

which specific parcels, and it was left for some subsequent meeting. He felt the Council was right where it was supposed to be, and he was not surprised.

Councilmember Anduri supported changing the zoning on the seven parcels to LR. One of the landowners who owns Parcel 2 appeared at the Planning Commission, and during discussions asked that the properties across the street be zoned LR and said he would be willing to have his zoned LR. He was subsequently released from his bargain after the vote failed, and his property was zoned LR/R-20. His recollection at the Planning Commission was that he felt strongly that in order to preserve the rural feeling of his property, he needed to have the property across zoned LR and in exchange for that, he was willing to take an LR zoning on his own property. He noted Parcels 4 and 3 were owned by the same owner as Parcels 7 and 1.

Councilmember Tatzin agreed with Councilmember Anduri on parcels 2, 3, 5, 6 and 7 for rural residential. He felt that regarding Parcel 4, having the split zoning would be a good idea, and suggested that staff come back with an approach that excluded the hillside portion from the developable land. He thought the lower flat part could handle one or two houses and would be consistent with the only neighborhood close to it.

Regarding Parcel 1, Councilmember Tatzin did not feel it would be developed residentially. In looking at uses allowed by permit, he asked whether it differed very much whether it was R-6 or LR. His view for Parcel 7 was for housing, but one of the other uses allowed by permit under Rural Residential zoning might also be appropriate. Similarly, Parcel 1 is probably unsuitable for a single family home, and wondered what was allowed as an alternative by permit.

Ms. Sinnette said most of the residential uses like R-6 and R-10 would allow religious assembly, quasi-public, community centers, parks, and some larger parcels would allow greenhouses and horticultural activities.

Councilmember Tatzin felt the Council should choose one like R-10 which would be consistent with some of the other properties, as long as the setbacks were conforming.

Vice Mayor Horn referred to Lot 7, stating there was some substantial grading for flat areas which would lend itself for a couple of more houses. Councilmember Tatzin said Lot 7 was the one he would like protected as Rural Residential zoning, and one of the uses by permit could be developed as a nice quasi-public building. Mayor Federighi confirmed it would preclude denser housing. Vice Mayor Horn felt the City was beginning to see single-family homes with freeway views, said sound walls were not always required, and felt people lived with the noise levels.

Mayor Federighi noted Councilmember Tatzin had made a case for a portion of Parcel 4 as R-20, and perhaps designating Parcel 1 as R10. Councilmember Anduri felt more information would be needed to find out more about the lot, find out how much square footage for Parcel 4 would be needed for a R-20 zoning, and would it be designed to get more than one house on it.

Ms. Merideth reminded the Council they could not decide tonight what the zoning would be.

Councilmember Tatzin said when the City was looking for alternative sites for the VA Building, it looked at Parcel 4 and had an estimate of the size of the flat area as approximately two± acres. He felt the Council might continue the item until September, or he could make a motion to split Parcel 4 as it is with the flat portion as R-20 and the steep as Rural Residential.

Regarding Lot 1, he said the Council could have it come back with the zoning which is most consistent with its size and dimensions, that would not allow for development without variances, and which would not allow for subdivisions but still with a residential zone.

Councilmember Anduri said the Council then would be asking staff to proceed to prepare whatever documents are necessary and bring it back and notice it. Ms. Merideth said it would have to go to the Planning Commission first for recommendation. She said the important thing was that the Council now wants staff to look at all seven parcels. Councilmember Anduri clarified that the difference was that all seven parcels would be looked at with a view to change zoning, but he felt it had been clearly requested to look at all seven parcels.

City Manager Falk said staff would prefer a motion, and said the question before the Council was how many and which lots would the Council like studied, not what zoning the Council would like them to be.

Mayor Federighi said it is clear they are looking at all seven parcels, but the Council disagrees on what the ultimate zoning designation should be. Ms. Merideth suggested directing staff to look at all seven parcels. Staff can bring back options to be heard by the Planning Commission who can then make a recommendation to the Council. A first scenario could be every parcel is LR. Another scenario could be a suggestion for Parcel 1 depending upon its size, something for Parcel 4 where the line is, how many potential single-family units should be on the property, etc.

Councilmember Tatzin confirmed it would be a Council-initiated General Plan amendment. Ms. Merideth said the Council was initiating a General Plan amendment change tonight, sending it onto the Planning Commission, and that staff would do an analysis. However, she clarified that staff has not concluded on how it would be presented, either with options or with a proposal with alternatives, or some other way.

She said staff would like a General Plan amendment for all seven properties, with the Planning Commission to make a recommendation, and with a view toward changing the APO parcels to residentially zoned parcels.

ACTION: It was M/S/C (Tatzin/Horn) to direct staff to initiate a General Plan amendment for the seven parcels as outlined in the Eastern Deer Hill Road area and that parcels with APO zoning be changed to residential zoning. Vote: 4-0-1 (Samson absent).

8. STAFF REPORTS:

A. Municipal Options for the Park Theatre
Recommendation: Direct staff to carry out further research on one of four options.

City Manager Falk introduced Peilin Chen, who had come to the City as an Intern and noted the City has been fortunate for the work she has done. He said he would give a brief background on the item, stating he had met with Alan Michaan, owner of the Park Theatre, who indicated that the economics of the theater market in Lafayette were similar to other cities and the competition among theaters was making single theatres less and less economically viable. Two years ago, the Park Theatre was put on the market, but Mr. Michaan chose not to accept any offers. Mr. Michaan said he had no definite plans at the time, however, with the pending grand opening of the multi-plex in Walnut Creek, revisiting the ownership of the Park Theatre was suggested.

Commissioner Ateljevich would like more information about any soils failure across Toyon Road.

Commissioner Lovitt expressed concern about the lot sizes, and suggested considering moving the lot line.

Commissioner Maggio moved and Commissioner Ateljevich seconded to continue this item to the Planning Commission meeting of January 20, 2005, in order to obtain a soils report and further information.

AYES: Anderson, Humann, Ateljevich, Loyitt, Maggio, Mitchell
NOES: None
ABSENT: Holt
ABSTAIN: None

C. GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative /Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.
Recommendation: Conduct public hearing and direct staff.
Project Planner: Christine Sinnette

Ms. Sinnette summarized the staff report, and described the background of the item, as well as the layout and scope of the properties. Staff requested direction from the Commission regarding which specific properties within the eastern Deer Hill area should be included in the General Plan Amendment and rezoning application, as well as what the proposed designation should be. Staff will then prepare the appropriate environmental documents and bring the application back to the Planning Commission for one or more meetings. A recommendation will then be forwarded to the City Council for their final determination.

She described the noticing for this item, and noted that several phone calls had been received from recipients of the notice. One caller inquired about the notice itself, and the other called expressed general support for change in zoning. Staff recommended that the Planning Commission hold a public hearing and provide direction to staff.

In response to an inquiry by Commissioner Ateljevich, Ms. Srivatsa clarified the proposed zoning changes on the map display.

In response to an inquiry by Commissioner Mitchell, Ms. Sinnette noted that as is typical with any kind of change in zoning that has the potential to downzone a property, property owners have concerns about their loss of economic viability. The letter specifically addressed the idea of a takings, as determined by the courts, if the property were to be down-zoned to L-R-10. She confirmed that the City's legal counsel would provide further information to the Commission.

Regarding CEQA, Ms. Sinnette advised that the initial study could have been begun by staff, but she felt that it would be beneficial to the public, the Planning Commission, and staff to define the project more clearly.

Commissioner Mitchell anticipated that the Commission would receive much more information, and was not comfortable making decisions until there was more detail. Ms. Sinnette advised that the Commission would receive topographic materials, which were readily available to staff. She noted that it would be more difficult to obtain site-specific information, particularly if access to the property was required, or to conduct studies. She added that traffic count information could be provided.

Chair Anderson opened the public hearing.

Allan Moore, land use attorney, 279 Front Street, Danville, noted that he had been a Planning Commissioner for the City of Walnut Creek for nine years. He noted that his offices represent Anna Maria Dettmer with respect to her property, and noted that she owned the great majority of property in the subject area. He noted that Mrs. Dettmer was the person most affected by this proposal. He directed the Commissioners' attention to Attachment C of the staff report, which contained the table showing the options. He noted in his legal view that the proposed reduction of property yield from 770 to two units resulted in the taking of property. He also believed that would result in a violation of Mrs. Dettmer's civil rights, due process, and equal protection rights. He noted that the recently updated General Plan did not change the General Plan designation to the APO designations. He noted that the General Plan clearly mandated that if this area were to be further planned, a Specific Plan would be required. He noted that the Attachment D of the staff report stated that the City did not have the funds to do a Specific Plan in this case. He did not believe it was a fair action to Mrs. Dettmer to downzone her property. He requested that the Commission exercise its discretion in doing a Specific Plan for this project.

Michael Henn noted that he was formerly with the City of Lafayette, and added that he was asked to make a presentation on behalf of Mrs. Dettmer. He agreed with Mr. Moore's assessment that the Specific Plan process, as part of the General Plan, was the appropriate procedure for development of this site, and to determine the proper constraints, limitations, and opportunities. He noted that properties that were steeper, more distant, and less stable are the properties that should be relegated to low-density uses. Conversely, he believed that property that is closer in, more stable, and more level is where higher intensity uses should be placed. The subject property is very close to the freeway on and off ramps, to BART, to downtown, as well as the schools. As such, he believed that it should be allowed to be studied for the appropriate uses to serve the community. Additionally, the subject site has almost no nearby single-family neighbors to be impacted; there were virtually no native trees on this site, and very few trees at all. He distributed materials to the Commissioners which detailed historical records, including the 1956 County General Plan for Lafayette. At that time, the site was planned and zoned for administrative offices for the County. When the City incorporated it, the City zoned the property APO, and the 1974 General Plan showed the property as being zoned for Administrative and Professional Office, with the alternative use of Multiple Residential. In response to an inquiry by Chair Anderson, Mr. Henn confirmed that he was employed by the property owner.

Hunter Holding, 3232 Deer Hill Road, noted that he worked with a nonprofit organization called Deer Hill Ranch, where children are taught trust and teamwork by using farm animals and an Outward Bound-style course. He noted that this use required a quiet and natural setting. He believed the addition of dense housing to this area would nullify the effect of that environment, and make the program impossible to implement. He noted that thousands of children who use the program have already benefited from the rural setting. He believed that the General Plan made it clear that this property was a showpiece for what the General Plan tries to achieve in setting the rural character of the City. He believed this particular area was a gateway for Lafayette, and as such, it sent a message of the City's priorities to those who travel through the area. He noted that it would set a dangerous precedent

to place office use north of Highway 24, which has not yet been done. He noted that he was a resident of the area, and believed that an increase in density would negatively and substantially impact the traffic. He believed that any APO zoning in this area was inappropriate, and he proposed that the APO-zoned properties in the area (Areas 1 and 7 on the map) be zoned Rural Residential (R-20 or L-R). He noted that would make all the properties in the Deer Hill Road area residential, which he believed would be consistent with the goals of the General Plan. He also believed that would be fair to the property owners in the area.

Guy Atwood, 3345 Springhill Road, noted that he represented the Springhill Valley Homeowners Association, and he was the former chair of the General Plan Advisory Committee. He noted that the Springhill Valley Homeowners Association supported the rural residential designation of this property, and added that he was very familiar with this property. He noted that the Planning Commission in the late 1970s-early 1980s did not believe that the APO zoning was an appropriate designation, but decided not to change the zoning at that time. It had expected to examine the designation at a later date. He noted that the General Plan Advisory Committee had voted nearly unanimously that all the parcels should be Rural Residential. He was the sole "no" vote, and voted that Parcel 4 should be R-20, which he still supported. He did not believe a Specific Plan study would accomplish a great deal, and acknowledged that Parcel 1 was a difficult parcel to zone.

In response to an inquiry by Commissioner Lovitt regarding Lot 1, Mr. Atwood replied that he had been asked about Lot 1 by City Council. He noted that his report to Council, as well as their responses, was included in the Council minutes as part of the staff report. He believed that it could be used for parking or park & ride, or even a recreational park. He did not have a specific answer for the use of Lot 1, and did not believe a house would be appropriate. He noted that a gas station had been on that lot, but was removed. He noted that the biggest single problem was that as traffic has increased on Pleasant Hill Road over the years, it has made ingress and egress from this area very difficult.

Chair Anderson closed the public hearing.

Commissioner Ateljevich believed that when the ridgelines were overlaid on these properties, the only real issue was the APO. She was certain that the ridgeline zoning should be applied to the property, and therefore, that it should be a residential use of some sort. She noted that the applicant had suggested that a gas station use would be good for Lot 1.

Ms. Srivatsa advised that after the gas station shut down for over 120 days without reopening, it lost its legal nonconforming status.

Commissioner Ateljevich noted that the lot could be zoned to permit a nonconforming use, which was the gas station's use designation.

Commissioner Maggio expressed concern about some of Mr. Moore's comments, particularly related to the stated goals of the General Plan. She believed that the City Attorney should be consulted to interpret that language correctly. She would like to find a use for Lot 1, and did not believe that a single-family home would be an appropriate use on that lot. She noted that she had been able to see the garbage trucks on the large lot 7 from the freeway, and believed that Lot 7 was a critical and visible gateway to the City.

Commissioner Mitchell agreed with City Council's position that Lot 7 should become Rural Residential. He noted that the layout of Pleasant Hill Road had changed since the gas station was on it, and added that there were two more left turn lanes.

Commissioner Lovitt agreed with Commissioner Ateljevich that the APO was the main issue, and was not comfortable making any decision about Lot 7 until feedback was received from the City Attorney about the City's options.

Commissioner Mitchell had heard some of City Council's discussion regarding Lot 7, and understood that they weren't going for the General Plan Amendment as opposed to the Specific Plan, based solely on money. They did believe they had the necessary information to make the decision. He was not convinced that studying Lot 7 would yield much more information, and did not know whether a Specific Plan was warranted.

Vice Chair Humann agreed that Lot 7 was the most serious issue, and could not make a decision on a zoning change without further study.

Chair Anderson agreed that Lot 7 was the primary issue, and could not discuss it more in-depth without further information.

Ms. Srivatsa advised that with regard to Mr. Moore's comments regarding the density calculations for Lot 7, it was primarily a mathematical calculation using the General Plan maximum density for the number of units. It did not take into consideration the Hillside Overlay District, nor the Ridgeline Protected Area. She advised that since the General Plan adoption process began in 1991, there had been discussions about this process, which she did not believe should be a surprise to area residents. She noted that there was substantial evidence in the record that shows where the City was headed.

Chair Anderson suggested that this item be continued.

Ms. Sinnette noted that staff should be able to generate some maps by the meeting of January 6, 2005.

Commissioner Mitchell moved and Commissioner Ateljevich seconded to continue this item to the Planning Commission meeting of January 6, 2005, in order to obtain further information.

AYES: **Anderson, Humann, Ateljevich, Lovitt, Maggio, Mitchell**
NOES: **None**
ABSENT: **Holt**
ABSTAIN: **None**

8. OTHER BUSINESS

A. **UPDATE ON THE TOWN CENTER III COMMITTEE ACTIVITIES**
(Est. 10 min*)

Commissioner Lovitt noted that at the last meeting, the financial study was addressed, which proved that an apartment project would not work. The developer was not able to find an investor with the rates of return shown. He noted that became more obvious as the meetings progressed. He noted that the focus of the project has since switched to some kind of for-sale housing. They were looking at no more than 80 units, possibly four stories over two levels of parking, with enhancement of the parking lot.

Ms. Srivatsa advised that the City was trying to develop some project criteria, addressing what the City would like to see, and amend the development agreement to give some assurance to any potential buyer that the City would be willing to stand by some of them. She advised that it was an expensive project, and noted that the cost estimate of the walkway by the creek alone was $4.4 million. An underground level of parking, according to the estimate from the project in Palo Alto, would cost approximately $30,000 a space.

Commissioner Maggio advised that she had received an estimate of $45,000 a space.

Ms. Srivatsa advised that the density of the project in Palo Alto was 36 units on 1.2 acres, and added that their meeting with Summerhill Homes had been very successful.

6. CONTINUED PUBLIC HEARINGS

A. **GP03-04, CITY OF LAFAYETTE (APPLICANT)**: Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10. **Recommendation:** Conduct public hearing and direct staff. **Project Planner:** Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org

Ms. Sinnette presented the staff report, and requested direction from the Planning Commission on which specific properties within the Deer Hill area should be included in the General Plan Amendment and Rezoning application, and what the proposed designations should be. She provided a brief background of the application.

In response to an inquiry by Commissioner Mitchell whether the L-R portion of Parcel 10 would be entitled to one home, Ms. Srivatsa noted that the Zoning Ordinance did not directly address his question. She noted that it stated, "When any zoning district boundary divides a lot or parcel of land recorded as one unit, the regulations of the least restrictive district shall extend for 30 feet into the more restrictive district, provided the two districts are similar." She noted that it did not address the issue of density. In this case, she believed the Hillside Overlay District and the slope density calculations would cover the parcel.

Chair Humann opened the public hearing.

Mr. Allan Moore, 279 Front Street, noted that he was a land use attorney, and that he had spoken on this issue previously. He noted that his client, Anna Maria Dettmer, strongly opposed the proposed downzoning and the General Plan designation that would affect her property. He appreciated the additional information provided by staff. He noted that the revised Table 1 in Option 2 (Attachment E) contained a new disclaimer at the bottom, indicating that the current General Plan density numbers listed are mathematical calculations. He noted that it was highly improbable that the maximum density will be achieved on the site. He would like the City to revisit the idea of a Specific Plan, and added that the General Plan clearly asked for a Specific Plan. He noted that the rest of his statements had been submitted in writing.

Commissioner Harris noted that he read Mr. Moore's letter, and inquired how Mrs. Dettmer acted in reliance with the General Plan with respect to the General Plan. Mr. Moore replied that when the General Plan Update occurred in 2002, the General Plan stated that the property would not be redesignated; if it were to be redesignated, a Specific Plan would be sought to obtain community input and developers would work with the property owners. In addition, the property could be planned through Opportunities and Constraints maps. At that time, Mrs. Dettmer did not challenge the General Plan text or language, relying on the General Plan language regarding the Specific Plan process.

Mr. Mike Henn, 226 Wildwood Avenue, Piedmont, distributed handouts to the Commissioners, and noted that he represented Anna Maria Dettmer. He cited Government Code Section 6-5863, which states that a community cannot downzone properties when those properties have been used to determine the allocation used to approve the Housing Element. He added that

downzoning may be accomplished by making a finding based on substantial evidence that there was still enough housing available (including affordable housing and mobile housing) to achieve the housing goals assigned by ABAG. He believed the remaining sites in the Housing Element were not adequate to accommodate the jurisdiction's share of regional housing needs as required by the Government Code. He noted that the handouts described his analysis in detail. He noted that Parcel 16 is a 5400-square-foot parcel at Lafayette Circle, had an estimated number of dwelling units of 50, according to the Housing Element. He believed that the City's proposed downzoning action required an update and amendment of the City's Housing Element in order not to violate Government Code 6-5863.

A discussion of the site at the display board ensued.

In response to an inquiry by Commissioner Holt whether the City would be in compliance with the Housing Element if the zoning change were to take place, Ms. Srivatsa confirmed that it would be in compliance. She noted that the table distributed to the Commission was submitted to HCD to demonstrate that the City had sufficient vacant and underdeveloped land to meet the housing needs, which was 194 units for the seven-year period. These units ranged from very low to moderate income units. The parcels of land on the list include both vacant and underdeveloped land that has the potential on its own, or assembled with other properties, to be able to be developed as multifamily. The City surveyed properties that it felt would be appropriate for multifamily in the Downtown area, particularly properties that lay north of Mt. Diablo Boulevard, on Second, Eileen, and Stuart streets. She noted that Mr. Henn's analysis was correct that Parcel 38 was not accessible to the State Highway. When the Element is revised, that number will be reduced by 60. She noted that when the parcels of land are assembled collectively, 50 units would be produced; it would not be on a single parcel itself. She noted that staff was sensitive to topography, and rather conservative in their estimates. No APO land was used to develop this list. Given the APO zone, staff estimated 50 units or less on that property, and not more than that. Staff believes there is sufficient vacant and underdeveloped land to provide its regional housing needs, even with the loss of 60 units.

Mr. Hunter Holding, 3230 Deer Hill Road, distributed a handout to the Commission, and recalled the November 18, 2004, meeting where he stated his belief that the properties in the Deer Hill area should be zoned only L-R or R-20. He noted the City's belief that changing the zoning from R-20 to L-R would have no impact because it contained very little developable land. He did not believe that was the proper conclusion, and noted that the topographical map he distributed illustrated his point. He noted that development of the piece would require an exception to allow development in a Class I ridgeline setback. He believed that because it was relatively flat, it would be a reasonable request. He noted that he did not intend to develop the property, but did not want to sacrifice any potential development through downzoning. Current zoning would allow 3.5 acres of flat land, and six residences on the flat piece. He noted that there was another development site on the L-R portion of his land, yielding seven residences.

Commissioner Ateljevich noted that the exception to Class I Ridgeline had a requirement that all economic development for the site ____[cough] and deprives the site of any economic activity; she noted that finding was very rigorous and very hard to come by.

Mr. Guy Atwood, 3345 Springhill Road, noted that he had lived next to the property for 37 years. He noted that City Council action was to rezone the property for residential use, and the General Plan calls for development in this area for single-family residential units. He noted that the options were limited due to these requirements. He noted that the City Council was wrestling with the proper zoning designation, and suggested that the Planning Commission focus on the parcels in question to give the owner some flexibility in developing it in some way. He noted that Parcel 10 was a split parcel, and that part of it was flat and part was steep. He noted that he was the lone member of the General Plan committee who wanted it to be zoned R-20. He believed the City would find it difficult to do much on the site, and added that the only other flat area was adjacent to Acalanes High School; the egress from that site was a problem.

Chair Humann closed the public hearing.

ATTACHMENT 5

In response to an inquiry by Commissioner Ateljevich regarding an Opportunities and Constraints analysis, Ms. Sinnette replied that she had said it was another possibility besides a full Specific Plan. The topography and some environmental factors associated with the properties would be examined in light of the hillside regulations; a better handle on the development potential could be gained as well.

Commissioner Holt noted that this was a very complex piece of property, and would like to see the scenario studied in more detail in terms of the real constraints and opportunities. Commissioner Mitchell requested more information on this item, and noted that [GPAC] recommended the properties be zoned to L-R. The Planning Commission at one time had recommended to accept those recommendations, and the City Council, by sending this item back to the Commission, seemed to think the properties should be examined from an L-R perspective.

In response to Commissioner Mitchell's question whether part of the lot near Pleasant Hill Road could be partitioned to more accurately reflect the site conditions, Ms. Sinnette replied that was one possibility, and added that some of the other properties had split zoning.

Mr. Holt noted that in the past, he had supported a Specific Plan for this area, and that it was an extremely complex situation made more so by the downzoning proposal. He believed the City should be very careful before downzoning the properties. He requested further study of this proposal, and would support the property being subject to a Specific Plan.

Commissioner Ateljevich noted that she would support a Specific Plan.

Ms. Sinnette advised that when staff had presented its proposal, and selected a consultant to prepare a Specific Plan, the cost was $150,000. She believed that a constraints analysis could be prepared for $15-30,000.

Commissioner Lovitt noted that a constraints analysis would be less costly than a Specific Plan. He noted that there was some consensus on some of the parcels.

Commissioner Chastain believed that the property should be considered as a whole, with all of the parcels. He believed it was important to understand how it fits into the City's General Plan, and believed the identification of constraints and opportunities would be valuable. He agreed that this property should be looked at in total, not piecemeal with spot zoning to accommodate a few houses. He did not believe there was enough information available to make that determination.

Chair Humann generally agreed with the other Commissioners' comments, and with respect to rezoning, noted that there were many portions of the property that should be zoned L-R. He acknowledged that there were several difficult parcels on this property, particularly because of its proximity to Pleasant Hill Road and the freeway. He believed the monies should be spent to get the right study and plan. He preferred a Specific Plan, but would accept a constraints study.

Ms. Srivatsa noted that staff would prefer developing a scope of work with a constraints analysis. She would like the Planning Commission to look at the scope of work for the constraints analysis, so that staff and the Commission may be on the same page. She suggested that the Commission send a recommendation stating that their first preference would be to do a full-blown Specific Plan, if that is the direction they would like to take.

Commissioner Holt moved and Commissioner Mitchell seconded to direct staff to prepare a scope of work for a Constraints Analysis on this property, and return to the Planning Commission for follow-up on February 3, 2005.

AYES:	**Humann, Ateljevich, Chastain, Harris, Holt, Lovitt, Mitchell**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**None**

6. **CONTINUED PUBLIC HEARINGS**

A. **GP03-04, City of Lafayette (Applicant):** Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill Roads from Administrative/Professional/Office/Multi-family Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill Roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, City of Lafayette (Applicant): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill Roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill Roads from R-20 to L-R-10.
Recommendation: Conduct public hearing and direct staff.
Project Planner: Christine Sinnette, Tel: 925-299-3241; csinnette@lovelafayette.org

Ms. Sinnette said that several Commissioners suggested that a specific plan should be prepared prior to making any general plan or zoning changes, and that at least an opportunities and constraints analysis should be conducted. This item was continued to tonight's meeting for a public hearing and to allow staff to prepare a preliminary scope of work and budget for a consultant to prepare an opportunity and constraints analysis. In the packet are two exhibits. One is a copy of the proposal for preparation of a specific plan, which was submitted in 2002 by WRT Planning and Design. Assuming a 15% increase from the 2002 proposal, the current estimated cost to prepare a specific plan would be approximately $168,000. The other exhibit is a proposed scope of work for a consultant to prepare an opportunities and constraints analysis (OCA) prepared by staff based on work prepared by WRT. Staff has modified the original proposal, which would not include in-field engineering, biological, geological or hydrological surveys nor any development schemes and there would be no land use planning conclusions made. Based on this scope the estimated cost would be approximately $35,000 with an additional 8-10% to account for miscellaneous costs such as travel, photos, etc. Staff is requesting that the Commission review these exhibits and discuss whether they wish to continue discussion on a project description for a general plan amendment and rezone or to forward a recommendation to Council for preparation of a specific plan or an opportunities and constraints analysis.
Commissioner Mitchell asked for clarification that the scope of work for the opportunities and constraints analysis was not specifically written for WRT.

Ms. Sinnette answered that it was based on WRT's 2002 proposal for the specific plan, which was divided into specific tasks. One of those tasks was for an opportunities and constraints analysis which staff modified eliminating the baseline and in-field surveys and increasing the cost by 15%.

Commissioner Mitchell asked if WRT as well as other consultants would bid on this work.

Ms. Sinnette answered that they did not necessarily have to go to bid but the Planning Commission or City Council could give direction on this.

Commissioner Harris asked if the work were performed and after further consideration, the Planning Commission were to do nothing right now, he wondered about the usefulness of the product in the future.

Ms. Sinnette answered that most of the information and analysis would transcend time and could be used in future analyses. It would be kept as a document in the City office for future reference.

Vice-Chair Ateljevich asked if they would have to adopt it.

Ms. Srivatsa said they would not adopt it but it would assist in making a decision regarding the general plan amendment.

Commissioner Lovitt said this item partially arises from Commissioner Chastain's comment that he would like to get a better understanding of how this area should and could work. He asked what they would get out of this that would help them in this regard.

Ms. Sinnette said the OCA would involve a review of existing aerial photographs and topographical maps to confirm the hillside overlay boundaries are correct, the ridge line is correctly mapped, and provide a literature search to determine biological resources, and habitats that could support special status species. A visual analysis could be critical by creating a map of the 7 properties with a series of overlays evidencing areas that could be constrained by topography, etc. This would also show how much area is buildable. The OCA will not present specific design proposals.

Commissioner Lovitt asked if there was a way that overlays could be created of potential density.

Ms. Sinnette answered that what could come out of it would be a mathematical calculation which could state that on Parcel A, after screening out constraints, you would have 10 acres of buildable area and then calculate maximum density based on what the current zoning designation allows.

Commissioner Lovitt said there was public comment at the last meeting regarding reducing the density line.

Ms. Srivatsa said they could address that.

Commissioner Chastain said this ought to help understand what areas could be built. Transportation and circulation would also have major constraint impact on some of these sites. He wondered if this information would be included in the current scope.

Ms. Sinnette said this was not in the current scope but a review of traffic counts and current levels of service would supply this information. Ms. Srivatsa said that Pleasant Hill Road does have one of the worst levels of service but it is designated as a route of regional significance and is therefore exempt from the LOS requirements. The City has an action plan in place for Pleasant Hill Road that involves a number of recommendations to reduce traffic congestion.

Commissioner Chastain asked why public meetings were not part of the scope of work for the opportunities and constraints analysis.

Ms. Sinnette answered that the OCA would not require public hearings on its own. If the Commission used any of the information from the OCA as a basis for determination for rezoning, it would be available to public review at that time. The document, by law, is not required to be reviewed by the public as it is just a database document.

Chair Humann opened the public hearing on this item.

Mike Henn, 226 Wildwood Avenue, Piedmont, representing Anna Maria Dettmer, thanked the Commission and staff for agreeing to proceed in this direction regarding the opportunities and constraints analysis. He believes this will allow achievement of a satisfactory resolution for all parties rather than a lengthy and expensive dispute. He feels staff's approach to the OCA is more focused than the WRT proposal. He handed out a copy of his comments to the Commission and staff. He said the applicant would like to provide the City with recently flown topography of the entire study area, which is a 1:100 planimetric survey with five-foot contours. This data would provide information to allow a computerized 3-D visual analysis, which they believe is necessary. This was commissioned to proceed this week and will be available in about a week. He concedes that the steeply sloped areas are not suitable for anything but the most limited development or none at all. A dedication of the steep presently LR portions to the East Bay Regional Park District for an expansion of Briones Regional Park is a possible result of any

ATTACHMENT 6

subdivision proposal, but that desirable result would not occur if the property were severely down zoned. A trailhead to Briones on Deer Hill Road may be considered. They know that the 22-acre site in particular is not too attractive at present with its steep cut slopes but with a little vision something much nicer could be attained. He invited the Commission to take a look at Orinda Woods in Orinda as an example of what could occur on the subject area, including an attached community in the area called The Knoll, along Orinda Woods Drive, uphill from the City offices.

There were no questions from the Commission for Mr. Henn.

Allan Moore, 279 Front Street, Danville, is a land use attorney representing Ms. Dettmer who owns 80 acres in the area and is most affected by any General Plan amendment. A letter was sent to the Commission on November 17, 2004 and he also gave testimony at the January 6, 2005 meeting. He feels the opportunities and constraints analysis is a good forward compromise and will work with staff in this regard.

Chair Humann closed the public hearing on this item.

Commissioner Mitchell asked to what extent the OCA would give a better picture of the area to the Commission?

Ms. Sinnette answered that it would provide better baseline information. It would provide information on how constrained the area actually is, define buildable areas, calculate acreage, etc.

Commissioner Mitchell asked if staff were recommending proceeding with the OCA.

Ms. Sinnette said the staff feels it needs this information to be able to support findings and evaluate any proposal.

Commissioner Chastain asked about the scope of work and wondered if staff was looking for any direction on that.

Ms. Sinnette updated the proposal by asking WRT for an update on their hourly salaries and WRT expressed interest in preparing the OCA or a specific plan. The Commission needs to follow Council's direction to prepare a general plan amendment or provide an alternative such as the OCA.

Vice-Chair Ateljevich said they should go forward with the OCA.

Commissioner Holt said he was not ready for a general plan amendment and supports going forward with the OCA.

Commissioner Chastain supports the OCA.

Chair Humann asked if staff would accept the applicant's offer of topographical information.

Ms. Sinnette said yes but it would be subject to review by the consultant for accuracy.

Commissioner Harris moved and Vice-Chair Ateljevich seconded to proceed with an OCA within the scope proposed by staff.

AYES: **Ateljevich, Chastain, Harris, Holt, Humann, Lovitt, and Mitchell**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

B. RZ01-02 Steven Kubitschek, (Applicant), Meritage Oaks, LLC (Owner) MRA Zoning: Request to rezone two lots totaling 20,781 sq. ft. from Multiple-Family Residential District

Recommendation: Continue the matter without consideration to the regularly scheduled meeting of September 21, 2006 to allow the applicant an opportunity to respond to comments and concerns expressed by the Design Review Commission and staff.
Project Planner: Michael Cass, Tel (925)299-3219, mcass@lovelafayette.org

C. MINUTES FROM AUGUST 3, 2006
Recommendation: Approve

Chair Ateljevich asked for a motion to approve the Consent Calendar.

Vice Chair Mitchell moved and Commissioner Lovitt seconded to adopt the Consent Calendar.

AYES: Ateljevich, Chastain, Holt, Humann, Lovitt, and Mitchell
NOES: None
ABSENT: Harris
ABSTAIN: None

Kathy Foster, Planning Department Admin. introduced Karen Liu, the new Planning Commission Contract Minute Taker.

6. CONTINUED PUBLIC HEARINGS

A. GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/ Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

B. RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.
Recommendation: Review staff report and background materials including the Eastern Deer Hill Opportunities and Constraints Analysis, select project description, and direct staff to prepare the appropriate environmental documents to be reviewed at a future public hearing.
Project Planner: Christine Sinnette, Tel. (925) 299-3241, csinnette@ci.lafayette.ca.us

Ms. Sinnette stated if the Commission would recall, when the General Plan was updated in 2002 there was some discussion about the eastern Deer Hill area and whether or not there should be general plan amendments and rezones done at that time. It was determined that goals and policies would be put in place related to the area for the time being and that consideration of changes would be included in a general plan amendment in 2004. Out of the options processed by staff for the general plan amendment and rezone, the City Council had expressed their interest in looking at the option of rezoning the three properties zoned APO out of the seven parcels in the area. The three parcels consisted of the two parcels along Pleasant Hill Road and the CalTrans frontage piece.

As a result, staff is presenting that option tonight, along with two other options for Commission review to help them determine which direction they wanted to take before any final decisions were made. Dain Anderson of MHA was hired to prepare an Opportunities and Constraints Analysis (OCA) – a baseline study, with no conclusions or recommendations per se. Categories reviewed in the analysis included general topography, existing access, slope, ridgeline setbacks, and zoning ordinance setbacks for building purposes. The analysis also includes a section on existing land use to provide the Commission with more background information.

Ms. Sinnette indicated staff is looking for feedback from the Commission on the OCA , as well as comments on the current proposed project description to change the general plan and zoning of the three properties from APO to LR10. Staff is also looking for direction regarding a rezone to R20 for the 2-acre parcel on Pleasant Hill Road that used to house a gas station.

Another option for consideration which was also discussed during the General Plan update is to change the zoning to LR10 for all seven of the parcels, currently now zoned either APO or a combination of R20 and LR10.

Ms. Sinnette stated Dain Anderson t was available should the Commission have any questions for him regarding the Opportunities and Constraints Analysis.

Chair Ateljevich asked Mr. Anderson where the idea came from with regards to the ridge line crossing Deer Hill.

Mr. Anderson stated it came from the City's own General Plan.

Ms. Sinnette reported the exhibit was taken directly from the City's GIS program that identifies the hillside overlay district and the three ridgelines. She indicated she spoke with Greg Wolff, who was involved in the hillside overlay and ridgeline classification study a few years ago and he indicated that for the most part, ridgelines were truly taken from ridgeline topography. There was specific discussion on this ridgeline and the Committee recommended that because of Deer Hill Road which effectively removed the nose of the ridge and the grading that occurred on the 22-acre piece, the Committee decided to basically interpolate where the ridge would have gone if that grading in Deer Hill Road had not occurred. It was the Committee that decided it was pre-existing and carried it through basically to the highway.

Chair Ateljevich stated it doesn't appear to cross Deer Hill in the General Plan.

Ms. Sinnette stated that it was probably an error in mapping. The base map was just USGS topographic and consists of 20-foot contour intervals. The data was then taken and pixilated into a series of 0 to 5, 5 to 10, 10-15, etc. type of contours. All of that was then put into a digital map which was used for the GIS program which also created the General Plan. By evolution, Ms. Sinnette stated there are bound to be errors in the two sets of maps and believes that can create discrepancies.

Chair Ateljevich asked if staff still had access to the original map prepared by the Hillside Committee.

Ms. Sinnette stated staff still had access.

Chair Ateljevich asked staff to double check that map since there was considerable discussion by the Hillside Committee, which she served on, that the maps be carefully done. She stated there certainly are discrepancies between her copy of General Plan she has at home and what is shown to the Commission tonight.

Commissioner Holt asked for a clarification on the chronological order of events as it pertains to the Planning Commission recommendation on the Specific Plan approved and forwarded to the City Council.

Ms Sinnette indicated soon after adopting the General Plan – staff did prepare a Request for Proposals to prepare a Specific Plan.

Commissioner Holt confirmed that this was voted on by the Planning Commission and forwarded to the Council.

Ms. Sinnette replied yes, but that ultimately, it was determined the City did not have the money to do it.

Chair Ateljevich indicated the City Council then made a motion to send it back to the Planning Commission for rezone to residential, which is why it's before the Commission tonight. The Planning Commission then sent back to the Council a request for constraints and they agree to do that in the form of a report back to the Commission.

Commissioner Holt clarified that the Planning Commission never had to forward a decision to change the zoning to LR until tonight.

Ms. Sinnette stated this process started a year ago when the Planning Commission was looking at the same three options that are presented tonight. But as the Commission began to discuss which option they might want to pursue – it became apparent there was not enough information.

Commissioner Holt stated he remembers that discussion.

Ms. Sinnette indicated the three proposed options have not changed from what the Commission saw a year ago.

Commissioner Lovitt asked if the last standing instruction to the Commission from the City Council was to reclassify the parcels that are APO.

Ms. Sinnette confirmed yes.

Commissioner Lovitt asked if anything has been changed.

Ms. Sinnette replied no.

Commissioner Holt stated that that was not entirely accurate – that the City Council hadn't directed the Commission to change the zoning.

Ms. Sinnette replied no and that the Council's action is what is shown on the first page of the staff report. The Council directed staff to initiate a General Plan amendment and that's what staff is doing. The Planning Commission can decide whether or not they want to approve a General Plan amendment.

Chair Ateljevich stated it doesn't indicate what zones to change it to.

Commissioner Holt stated that's the point he wished to make.

Ms. Sinnette clarified that after the City Council voted on this action in 2003 and staff was finally able to start work on it – they were confused as well. When asked for clarification, the Council directed staff to look at all seven parcels with specific direction that the APO-zoned properties be changed to residential. They didn't give a firm direction on what the Planning Commission should do with the other five parcels and didn't say necessarily what zoning designation the APO should be changed to. Those options were left up to the Planning Commission.

Chair Ateljevich asked if everyone was on the same page now.

Ms. Sinnette stated that's why the Planning Commission have the multiple options – the Commission can look just at the APOs or they can look at all seven if they want, or they can make up your own.

Commissioner Holt asked if the Commission was tasked to change the zoning to LR?

Ms. Sinnette replied no.

Commissioner Humann stated he was incredibly confused and apologized for that. It sounded to him as though the Commission was virtually mandated by the City Council to change this to some sort of a residential zone – whether it be LR 5 or LR 10 or whatever but get it out of the zone it's in.

Ms. Sinnette indicated the direction was to get it out of APO.

Commissioner Humann wondered why Council is even asking the Commission to look at it if they are just telling them how the Council wanted the zoning changed.

Chair Ateljevich stated the Council wants to know what the Commission wants to change it to.

Commissioner Humann then asked if discussion is only for rezoning purposes and that maintaining the existing zoning is not open for discussion.

Ms. Sinnette indicated the direction was for staff to initiate a General Plan amendment definitely for the three APO pieces to go to something residential. Council members did have their own opinion on what they thought it should be changed to but when it came down to motion – there was no direction on what residential zoning designation they were suggesting. As a body, the Commission can choose to select one of those three options, which includes the Council's directive to staff, or the Commission can come up with a combination.

Commissioner Humann stated the report clearly only addresses the aspects of residential development for those parcels and that no other options were discussed.

Chair Ateljevich stated that has been the Council's direction.

Commissioner Humann indicated that that was what he was getting at; that this was by design.

Chair Ateljevich indicated it goes back further than that. The GPAC wanted to go residential, as well as the Planning Commission.

Commissioner Holt reminded Chair Ateljevich that the Planning Commission did vote in the affirmative to clear the Specific Plan but that they needed more study and that is why the OCA was done. He felt the Planning Commission as a planning body can still look at it and make a statement.

Commissioner Humann asked for clarification with regards to the intent of the study with respect to the land use. He asked if it was to determine the best use of the parcel or is it geared more towards evaluating the residential aspect for the property.

Chair Ateljevich indicated it was the physical characteristics more than the land use.

Commissioner Holt stated the analysis does cover opportunities and constraints for the Commission to look at.

Commissioner Humann indicated he senses the discussion is more along the lines of revolving around residential use.

Ms. Sinnette stated she felt that that was an incorrect interpretation. The analysis was really meant to be an objective, technical document providing background information. The only thing by design as far as possibly suggesting residential is within the discussion of setbacks. The greatest constraint would be setbacks for an LR district, requiring a 50 feet setback from property line. Ms. Sinnette stated that that's the only thing that she could say by design was really discussing residential at all. She reported staff tried to be very open when there are opportunities for development.

Chair Ateljevich indicated that the hillside designation was deliberately placed over the whole area by the GPAC, by the Hillside Committee, by the Planning Commission, and by the City Council. That designation is itself a single family residential – it's not ever meant as a guide. So there's a dichotomy here and right now, where the current zoning is inconsistent with the overlay that it finds itself in. The overlay is by far the more recent decision of the City. The APO dates back to the 1970's, when the City was first zoned. So the more recent decision has been more residential in character for that area, more open space-oriented, more concern about the entrance to the town being more rural and residential than commercial. And there has been a change in the part of the City over the use with respect to how that intersection is going to be seen.

Commissioner Holt stated that in his mind, the analysis is not really an opportunities and constraints analysis - it's a constraints analysis focused towards why it should be residential.

Commissioner Chastain responded that the inconsistency of the General Plan is why we have to look at this and as he understands it - at one point, that's why the specific plan was called for to try to resolve that issue. And this was a compromise in terms of the level of information between having no analysis and having a specific plan. Upon reading the document, he didn't think it necessarily just weighed towards residential. For instance, the information about access specifies the potential viability for commercial development, which is limited. To some degree, some of that information would have to be interpreted since it's not stated clearly.

Chair Ateljevich indicated another point she would like to make along those same lines, is that there is in the General Plan a description of some of the attributes that the Specific Plan is supposed to have. She didn't think the City Council desired to change the description of what the goals for that area were. Furthermore the goals for that area are clearly defined as residential in nature with one exception which are the properties fronting Pleasant Hill Road; there the General Plan declines to state the use. For the rest of the property, it has clearly stated residential.

Commissioner Holt asked the Chair if that applied to the properties that front on Highway 24.

Chair Ateljevich replied it applied to the properties that front Pleasant Hill Road, not the ones that front Highway 24.

Ms. Sinnette reported the background chronology is identified on the first white page of the report.

Chair Ateljevich indicated it's the first page of Attachment A, dated October 28, 2002. In that revised General Plan each statement is made as goal and policy. The policy LU13.1 - preserve and enhance the semi rural single-family residential character north of Deer Hill Road is pretty clear.

Commissioner Humann pointed out that as Commissioner Holt had stated, it addresses the property being used for residential use which is OK if that's what the Commission were told to do.

Chair Ateljevich replied she didn't think it addresses any use.

Commissioner Humann indicated at the end of every conclusion, whether zoning should be LR10 or LR5 is discussed – not whether it should be commercial use or not.

Chair Ateljevich replied the LR5 versus LR10 report that's in the packet – are copies of the review that the Commission did a couple of years ago when some of these properties were reviewed. The ones north of Deer Hill were reviewed to see whether they were appropriate for the LR5 vs. the LR10. We concluded then they were not suited for LR5.

Commissioner Humann indicated he was not arguing that. He indicated the report was based upon the desires of the recent General Plan, which was to zone this as a residential district.

Vice Chair Mitchell asked Commissioner Humann where in the Opportunities and Constraints Analysis was he finding that direction.

Commissioner Humann stated he expected a report that would address the optimum use for the land.

Chair Ateljevich replied it never asked for that - not the highest and best use.

Commissioner Humann stated that's all he wanted to know.

Chair Ateljevich indicated the Commission did not specifically ask for a use analysis. The analysis is meant as a tool for the Commission for evaluation purposes. Our hands are not tied to this, if we need more information we can ask for it. This is not a specific plan – it's a tool. We can use it or not. It was not meant to draw conclusions – it does not make recommendations – that's the Commission's job.

Vice Chair Mitchell pointed out Ms. Srivatsa had something she wanted to say.

Ms. Srivatsa indicated when the Commission asked staff to prepare an Opportunities and Constraints Analysis - at that time very little was known about access, topography, etc. The Commission asked staff to provide them with more background information concerning the properties and staff could use the Commission's experience for determining the land use decisions. Along that line, the analysis gives the Commission an idea of the constraints associated with the sites.

Commissioner Lovitt replied he was happy with the report because it he feels it provides the necessary background.

Ms. Srivatsa stated it is important the Commission go back to the General Plan and look at the goal relating to Deer Hill. Close scrutiny reveals the properties are separated north of Deer Hill from those that are south of Deer Hill and along Pleasant Hill Road. There is a distinction between the two.

Vice Chair Mitchell asked staff about the parcel farthest to the west which is zoned partially LR and partially R20. He wondered if an applicant wanted to build on that property would the lot be based on the LR zoning.

Chair Ateljevich stated the properties would be controlled by the hillside overlay district and the average slope of the entire parcel – not little pockets of it. Furthermore, an average slope of well over 30% or 40% would be a good guess. Chair Ateljevich requested a slope calculation on the R20 portion of both that lot and Lot 69. She asked that the work be independently done by an engineer and also include the parcel fronting Pleasant Hill Road, which she thought was parcel No. 28. She also wanted a slope density calculation on Parcel No. 27 stating the information would enable the Commission to make a decision about the kind of density that can be built on the parcel. Commissioner Lovitt asked Ms. Srivatsa to follow up on her comment pertaining to the distinction between north and south on Deer Hill Road. The direction from the City Council was to change the APO, which is south of Deer Hill Road. He wanted to know if the City has made a determination regarding this issue or is it the Commission's job to change it to the APO.

Ms. Srivatsa responded that the General Plan came about in 2002 when all the goals and policies were written. The City Council then made a motion to amend the General Plan to change the use to residential. Therefore, the motion followed the General Plan and the motion is more recent.

Ms. Srivatsa also added that the General Plan Advisory Committee recommended it go residential. The Planning Commission recommended that it go residential. Staff took the matter to the City Council and felt that not all sites in Deer Hill, in this area were suitable for single family residential. And before the General Plan was adopted in January of 2002, we suggested putting this area in a specific plan as it really warrants additional study.

Chair Ateljevich asked if staff had anything further to add

Ms. Sinnette said she has been trying to get an answer from the City Attorney about what would happen if there were split zoning on properties. Such as LR and something else. As an example; if an owner has less than 10 acres can they get one unit for the LR and then whatever the density allows for the other. Other priorities have interfered with getting an answer but I will try and have an answer for you on that.

Chair Ateljevich felt the answer wouldn't be applicable to this site as the physical constraints of this site would determine density.

Commissioner Holt asked if they were speaking about the APO site.

Chair Ateljevich responded that she was talking about the two R20 splits.

Chair Ateljevich opened the public hearing at 8:20. She asked Mike Henn if he wanted to speak in behalf of the applicant. Mr. Henn responded in the negative.

Martin Lysons, an attorney with Gagen McCoy in Danville representing the Dettmer family. Mr. Lysons introduced Michael Henn, who is their planning consultant. Our firm has been involved in this process pretty much since the beginning. There is a letter in the staff report from Allan Moore who is a partner of mine, dated November 17, 2004. This letter is obviously already part of the record and I would ask that this Commission review that carefully before making any decisions. In a nutshell, the letter makes three general points, which I'll summarize now and expound on a little bit. One is that the Dettmers continue to oppose the downzoning of their property, based on a fundamental fairness. Secondly, that this is essentially a taking of virtually all economic use of the Dettmer properties. Thirdly, that enacting the downzoning would require the adoption of a specific plan for the area, as noted in the General Plan. And fourth, I would like to add to Mr. Moore's comment that this proposal would conflict at least the way that's it is worked now, would conflict with state law as it pertains to the affordable housing elements.

Regarding fundamental fairness – according to the staff report - the General Plan density goes on the Dettmer property from approximately 882 units combined to a combined 7 units under the proposed LR10. That's 7 units over the entire 80.3 acres. I believe this is a pretty stiff price for the Dettmers to pay for the crime of not having developed their property yet to date. Not only is it unfair – but it is a taking under this amendment. This is a 99% reduction in the development value of the property. The magnitude of this diminution in value would require under the Constitution a fair concession. Noted in the OCA, there are development constraints on this property, just as there are development constraints on any property. The OCA does take great pains to detail the constraints, but as noted by members of this Commission – they do so mostly without considering the opportunities for smart development of the parcels.

When the property is developed, that is the time when the developer should address these constraints. It is not proper to handcuff these properties before any development is ever proposed. The practical and fair solution is to leave the zoning as it is and then let the development and developers account for the constraints as part of some integrated proposal that accounts for both opportunities and constraints. You cannot address these development constraints in a vacuum simply by downzoning the property.

Regarding a specific plan, the General Plan is very clear. Program LU-132.2 requires that the City prepare through a community process an eastern Deer Hill Road specific plan. This opportunities and constraints analysis is no substitute for a specific plan. For one – as I noted before, the OCA does not look at opportunities, but looks solely at constraints for the most part.

But also, the OCA as presented is not a specific plan as defined by state law. State law requires under California Government Code text and diagrams would specify the following detail - the distribution, location, extent of land uses within the plan; distribution, location, extent, and intensity of public and private transportation, sewage, water and other facilities and anything else needed to support the land uses in the plan. It also must identify the standards and criteria by which development can proceed within a plan area and it must outline a program of implementation measures in order to carry out these first three requirements. And finally, there must be a statement of the relationship between a specific plan and the general plan and a showing that there is no conflict between the two. The specific plan is an integrated document and it's integrated vertically with the general plan. It lays out development criteria and standards of development and again, these cannot be analyzed in a vacuum. The OCA therefore is not even close to a suitable substitute for a specific plan and should not be treated as such.

As a last point, I'd like to address affordable housing. According to Government Code Section 65863B, the City cannot reduce the residential development density for any parcel to a lower residential density unless the City makes written findings supported by substantial evidence of both of the following: 1) that the reduction is consistent with the adopted general plan, including the housing element; and 2) that the remaining sites that are identified in the housing element are adequate to accommodate the jurisdiction share of the regional housing needs pursuant to the state affordable housing requirements.

Based on what I've seen of the City's low income inventory – these findings cannot be made. Also, it should be noted that recent changes in state law would make it even more difficult to meet the City's share of affordable housing needs. Mr. Henn will give some more detail on these later developments but I believe that the City should consider these provisions on deciding whether or not to recommend downzoning of the Dettmer property. So the proposal before you is not just a routine change in the General Plan designation, it represents a near total diminution in value of the property as owned by Dettmers. I would urge the Commission consider carefully all the ramifications of these takings – both for the City and the Dettmers before acting on this proposed down zoning.

If in fact, the Commission decides to change the zoning, we would request that the zoning be changed to some residential designation that allows for a similar density to what is allowed for at this point. Mr. Henn is here to give some more detail on some of the housing element requirements and I'm available for any questions you may have.

Chair Ateljevich asked Mr. Lysons what he said the yield of the property was.

Martin Lysons responded that he had taken the information from the staff report. He also stated that the general plan is currently at 828 units combined.

Chair Ateljevich asked if this is on all seven properties.

Martin Lysons said no it is strictly the Dettmer's properties.

Chair Ateljevich questioned what portion of that was on the hill property.

Martin Lysons said it is in the table in the staff report but thought it is 770.

Chair Ateljevich verified that consideration of the hillside ordinance on those properties particularly the 30% slope and a density analysis was not performed. [inaudible] Therefore the yield could never have been 882 units – not ever since 1972 because this property has been hillside property since the very beginning of the hillside ordinance which has been around 1972.

Martin Lysons agreed there are constraints on the property which have been there a long, long time. But pointed out this is the General Plan designation as shown in the staff report. He stated his thought on all of this was that that the time to limit the development is when there is an actual proposal and that's the time to take into consideration all the physical constraints as part of an integrated proposal to develop a property.

Commissioner Humann agreed with Chair Ateljevich that throwing out a number is irrelevant because it's got nothing to do with anything. It's just taking an existing zoning and dividing the area, that really has nothing to do with what the property would yield based on the current zoning. He thought it was a mischaracterization of what the property could yield and would like to have that on the record.

Martin Lysons said if that is the case then it's a mischaracterization in the staff report.

Chair Ateljevich said she agreed our report misrepresents the density tool and that it goes by the zoning density and doesn't apply to hillside. However, she addressed Mr. Lysons stating he must realize the hillside ordinance does apply to this property and will limit density.

Commissioner Humann agreed it would be best to look at this objectively and fairly without exaggerated figures.

Martin Lysons re-iterated the numbers are adequately shocking without the 882 unit number – the fact that it's reduced to 7 over 80 acres is shocking in itself.

Chair Ateljevich thanked Mr. Lysons for his input and asked if Mr. Henn would like to speak.

Mike Henn noted he had handouts for the Commission and thanked staff for having the map on the wall.

Commissioner Holt asked Mr. Henn to identify himself for the record.

I'm Michael Henn, representing Ms. Anna Maria Dettmer. And the map on the wall was provided by Mrs. Dettmer's engineer. In the yellow are the areas that are less than 15% slope. So there are quite a few acres. This parcel is 7 acres on the 22 acre piece that are less than 15% slope.

Vice Chair Mitchell asked if that number could be repeated since he did not hear it.

Michael Henn repeated there are approximately 7 acres on the 22-acre APO piece that are less than 15% slope. So it has quite a bit of land that would not be constrained by slope. He hoped the concerns raised in his August 4th response to the OCA were clear and if the Planning Commission had questions that they raise them with him and he would answer them as best as he can. Unfortunately, it appears that the consultants for the OCA believe that their mission was to prove that the subject properties on Deer Hill Road were heavily constrained and that they were to provide a basis to justify the downzoning. Due to this unfortunate perception of their mission and the lack of historical background, the resulting OCA document was poorly balanced and plagued with factual errors and conclusions as outlined in my August 4th response letter.

Mr. Henn stated he hoped the Commission would find the fundamental conclusions that should be drawn from the OCA, combined with his response is that the more level areas are not burdened by significant development constraints. Consequently, these areas could be nicely developed under the present APO and R20 zoning and under the careful Lafayette design review process in a manner consistent with the General Plan. As pointed out by Mr. Lysons, Mrs. Dettemer's Legal Counsel, the City would benefit from having the availability of the 22 acre APO zone site to assist in meeting the requirements of the affordable housing laws. Lafayette's past strategy of using the extremely limited number of vacant and under-utilized downtown commercially zoned properties to meet the affordable housing requirements will not work in the next round of housing element updates. The law now requires that there be a sufficient number of sites in zones where a land use permit is not required and that half or more of the properties in the inventory must be on sites designated exclusively for residential uses at appropriate densities.

Personally he believes there is not another site in town, where a supply of multiple housing could be accommodated, with less disturbance to single family residential neighbors than the subject property. He asked the Commission if they chose to pursue this option of some sort of residential multiple zoning for the Dettmer property, the hill portion he recommended that a multiple designation be applied to all of the 22 acre APO zoned property, except for the corner site sometimes known as the Christmas tree lot, as well as the former gas station site. These two areas east of the small creek are less suitable for residential use than are other parts of the site and should remain APO or an office building of some sort. Therefore, he urged the Commission to drop the City-initiated downzone and General Plan amendment as an inappropriate use of public funds.

He further indicated that because there is no applicant to charge for necessary work, the taxpayers of Lafayette would be responsible for all costs, for all the studies, staff time, future work and to pay the cost of the City's defense. Since Lafayette is a City that cannot pay to repair pot holes, nor provide an adequate level of police protection and must rent it's city's offices, it should be obvious that there are higher properties for the scarce tax dollars. I hope I can answer some questions for you.

Vice Chair Mitchell asked if it was Mr. Henn's desire that the gas station site and the Christmas tree site remain APO and the rest of it go residential.

Mr. Henn indicated his preference would be a residential designation of an apartment level – not an LR type.

Vice Chair Mitchell thanked Mr. Henn.

Mr. Henn asked the Commission to look at the state law handout that is before them, where he has highlighted a couple of sections – it's a response from the state housing new development department that is given to all cities and counties in 2005.

Commissioner Holt asked Mr. Henn if the small parcel fronting Highway 24 was parcel 14.

Michael Henn asked if that was the state piece owned by CalTrans.

Commissioner Holt asked what Mr. Henn envisioned as the highest and best use for that property.

Michael Henn replied nothing.

Commissioner Holt asked if a lot line adjustment was appropriate.

Michael Henn wondered if Commissioner Holt was referring between Mrs. Dettmer and CalTrans?

Commissioner Holt replied in the affirmative.

Michael Henn said he didn't know. Also, it is sort of steep; it's a drop off along side the road and then climbing the hill. I don't know really what it's good for.

Commissioner Holt – Well, it's not worth anything unless you can enlarge it.

Michael Henn – Well, I don't know – I couldn't speak. We've never discussed that with my clients.

Commissioner Humann aksed Mr. Henn if his client had undertaken any study on their own such as land planning, space analysis, or anything else.

Michael Henn replied they did provide the topography that you have. It was done by Pacific Aerial Survey or HJW as they now call themselves.

Commissioner Humann – But no development studies – nothing to support your report.

Michael Henn – No, actually just a little bit of background. Mrs. Dettmer is actually a young woman who lives in Oregon and she has two small children and she was really hoping to hold onto the property until a future date. She just doesn't want the value to diminish as it would if this occurs.

Commissioner Chastain – But the question was not that, the question was you haven't done any development studies to indicate what could or could not happen.

Michael Henn – No, she has not done anything. She found out fairly recently when she received the letter from the City that the downzoning was about to proceed.

Chair Ateljevich thanked Mr. Henn and called Hunter Holding to the podium.

Hunter Holding stated he had sent a letter on November 11, 2004 summarizing his thoughts concerning the property in question. He said there is no commercial development north of Highway 24 which is by design of the General Plan. He pointed out that this area is a gateway to Lafayette and it currently presents a semi-rural impression which would be completely changed if some of these ideas are implemented. In his opinion it is one of the few areas that allow the City to say that it has a semi-rural character. Furthermore it is a high traffic area which he feels is something to consider when developing this area.

Chair Ateljevich thanked Mr. Holding and asked if there were any questions. Seeing none she closed the public hearing portion of the meeting at 8:33 pm and brought the item to the Commission for discussion.

Vice Chair Mitchell addressed staff and referred to Mr. Holding's letter from 2004 where he states the intersection of Pleasant Hill Road and Deer Hill as a level service E, which is not good.

Chair Ateljevich interjected that the problem is expected to get worse.

Vice Chair Mitchell said the OCA shows access points, along various locations – we currently don't have any additional information with regard to traffic flow and the consequences if changes were to be made.

Ms. Sinnette replied in the negative. When we were first putting together the plan for the OCA, we discussed circulation and how much detail we could provide in that respect. At that time we felt it would be hypothetical without having a true development plan. And that was not the intent of this document. The brief mention of the current conditions on Pleasant Hill Road indicate that it is a highly impacted roadway. But any type of analysis of circulation and traffic would not have been meaningful without having a project.

Chair Ateljevich said she feels it is the most congested intersection.

Vice Chair Mitchell – Conversely, if the Planning Commission were to recommend this, Mr. Henn would like that gas station and Christmas tree parcel be changed in zoning. It wouldn't be prudent for us to change it if the street couldn't accommodate the traffic.

Ms. Sinnette –said, in her opinion, only educated guesses can be made at this point about the uses for these parcels.

Chair Ateljevich –said there is a MRP zone in the City that was written for small scale development commercial developments near busy streets – it's a one-story zone.

Ms. Srivatsa – proposed another option for the Commission to consider. The EIR from the General Plan analyzed these properties in their current zoning. Therefore I think it's important to note that level of service was reached assuming there was multi-family on the APO.

Commissioner Holt – the City has been looking at this end of town for as long as I can recall. It troubled him that this OCA really didn't explain the opportunities and constraints like a hybrid-specific plan. Mr. Holt expressed his concern about having all the properties zoned LR. Because I am absolutely convinced it makes no sense at all to have this all LR. As a realtor he feels people would not want to live next to the freeway. He urged the Commission to scrutinize carefully some of the parcels in regards to the best use as it applies to the General Plan. I think we really need to look carefully at the highest and best use as it applies to the General Plan as written. He strongly opposes downzoning. He feels there are many uses for the parcels but re-iterated his disagreement about downzoning to LR. I can think of many good uses and there are probably many more that I haven't thought of but that's what a specific plan is for. You could have assisted care, you could have city offices including police and fire; you could have multi-housing; you could have low cost housing; you could have some sort of mixed use housing and offices.

Commissioner Holt said he was primarily talking about lot 27, lot 28, and maybe the front part of lot 10 – but mostly his comments pertained to lot 27. He said Mr. Holding's property is lovely and should be LR. Perhaps the rear of 016, 04 – the rest of it could be multi-use. He again expressed support for a Specific Plan.

Chair Ateljevich reminded Mr. Holt that the City has stated it cannot do a Specific Plan and furthermore the Council is quite clear in that regard. What can happen is if the applicant wants to propose a specific plan – he's always free to. There's nothing stopping him.

Vice Chair Mitchell stated that the GPAC recommended LR; the Planning Commission 4-2 recommended LR; the City Council recommended LR; even the applicant is recommending residential zoning on Lot 27 – excluding the Christmas tree site. From his perspective it's pretty clear that residential zoning is appropriate for this area. The question that he would have would be more studying on the Christmas tree site. He feels more information is needed on the Christmas tree site, the gas station site, and the slope-density calculation for site no. 10.

Commissioner Holt asked Mr. Mitchell if he was referring to LR on lot 27.

Vice Chair Mitchell responded that he thought LR would be appropriate for all of 27, except the Christmas tree site. He wouldn't make any judgment on that site without further information.

Commissioner Lovitt said he'd like to leave the properties on the north side of Deer Hill non-APO, for the time being, and keep them residential.

Mr. Lovitt did not have a firm decision on lot 28 at this time. Concerning Lot 27 he favored the designation presented by Chair Ateljevich. He was unsure about what to do with lot 14.

Commissioner Chastain stated his questions and comments were different from what he'd heard thus far. He thought the task of the Commission was not just to decide whether or not they should or should not rezone this property, but do they have enough information to make such a decision. He didn't think the issue was so much about zoning but about the various problems concerning the property. Such as the overlay of the property in terms of slope and the things they had been discussing up to this point. He questioned whether the Commission had enough information to even begin to deal with the decisions regarding zoning and wondered if they were comfortable attempting to do so.

Commissioner Chastain also voiced concern about dealing with someone's property and being sure before action is taken the Commission has the necessary information. He had a lot of concern about parcel 28, the Christmas tree lot, and the traffic impact. He foresees potentially problematic aspects to any development that goes on there. He suggested asking for a much more reduced study that would give the Commission a clear picture of the development impacts on that portion of the much larger area the Commission is looking at. He wasn't in total support of a Specific Plan, per se, but to focus the study on the areas the Commission wants to look at.

He also wanted to hear back about issues concerning split zoning. He thought the Commission ought to engage this area just to kind of clean it up a bit. Commissioner Chastain stated for the record, *it's not as if I don't see it as a willful act, but this has been an area of concern for sometime. And so, however we do this, I don't look upon this as kind of a willful act, but in fact, something that has been recognized as a persistent problem for some time.* He also stated that it's important to be clear that the Commission, as is his understanding, doesn't have a solution at this time.

He thought the biggest issue was the property south of Deer Hill and some of the tools presented to the Commission were interesting in terms of uses there. But in particular it's at that intersection and those properties that clearly you could see as something of a different character than the rest. To him the problem was in deciding what to do.

Commissioner Humann agreed with much of what Commissioner Chastain said. But wondered if a decision needed to be made tonight.

Chair Ateljevich responded in the negative stating they should ask for more information.

Commissioner Humann wondered what would happen if the City won't go any further.

Chair Ateljevich - said she didn't think the Commission should ask for a Specific Plan but also felt whatever tool the Commission needed in order to make a decision should be provided.

Commissioner Humann said that in that case he agreed. He also was in complete agreement with Commissioner Chastain's thoughts. He voiced concern about what Commissioner Holt had said and wanted the issue addressed by staff or somebody else. He asked Ms. Srivatsa if he was correct in saying 3 General Plan amendments were allowed per year.

Ms. Srivatsa stated it was four.

Commissioner Humann – Four? So that speaks to the seriousness of a general plan.

Chair Ateljevich agreed with what was said, particularly with Commissioner Chastain. She asked for slope calculations on areas where she's trying to decide whether it makes any difference if we keep the R20 or not on those two parcels that it falls on. It may not make any difference. It just means there is no need to change anything. If it does make a difference then the Commission will need to look at that. Secondly, as for the larger parcel – she agreed with what's been said about the two little areas for Parcel 28 and the portion of 27 – the Christmas tree portion. She is leaning towards the MRP which is already in place. She thinks it is important that it stay residential in character, that it not be 6-story tall building, or even a 3-story tall building. She is concerned about having businesses that will attract the high school students because she doesn't want them crossing that street. But it has be very low in-and-out kind of uses. It wouldn't it hurt to look like residential even if it's an office or something else. It would have to be a really well thought out plan. The issue is the use of those two small parcels. She didn't know if the Commission should order a specific plan because a specific means we have to plan in quite detail what's going to go there and I really don't see that's the approach. What we want is perhaps a professional analysis of what the options are that meet their goals.

Commissioner Lovitt said it seems that most of the problem is on 27 and maybe we could get it worked on by trying to see what alternatives would work, or how it would look.

Chair Ateljevich referred to the constraint maps and in her opinion didn't believe two single family houses were the only option. She didn't think that the kind of dense construction that the APO suggests has any possibility. She wondered if there are low key options that we just don't know enough about.

Commissioner Chastain confirmed that a clustered grouping of dwellings is not a problem and it would provide more housing. He voiced concern about obtaining the necessary information from the study as a basis for the decisions the Commission would have to make.

Commissioner Holt referred to page 7 – figure 3 – our proposal. Because there are so many unknowns Commissioner Hold recommended keeping it as it is for the time being until they receive further information.

Chair Ateljevich confirmed that they were keeping it as is until they know what they want to do. Chair Ateljevich asked staff if a one or two-page description could be developed for what they're asking and if so, would that be sufficient.

Ms. Srivatsa – suggested the Commission tell staff what they're looking for. What is it that you want and be rather specific about what you are looking for and we'll craft something and get some proposals. Specifically, what information does the Commission want?

Commissioner Holt – One thing I'd like to see is an appraiser giving us a rough value of two houses on Lot 27 as opposed to current zoning.

Chair Ateljevich said we're not supposed to do that.

Commissioner Humann – But Dick, I think I'm getting a feel as a general consensus that no one on this dais is interested in two houses on 27 – is that incorrect.

Commissioner Holt – Well, wait a minute – wait a minute. That's not entirely true of where I'm coming from. I think the commissioner said he wants two houses.

Commissioner Chastain – Wait, I don't think I'm prepared to argue that tonight. I don't think anybody is. I think what we're trying to decide is what do we need in terms of information to make that discussion. Is that right?

Commissioner Humann – so an objective study of Parcel 27 and the gas station lot as to the potential uses.

Commissioner Lovitt – In terms of what I would like to see – I like see an uncluttered map of where things can actually get build – they meet our ordinances – blocks, triangles, I don't care what you want to do to designate areas where we can build and we're almost there. I'm strictly talking about 27. Where can we build on 27, where we meet the ridge line requirement, the visibility requirement, how high can it be, what ground area can it cover. It's just hard for me to figure out.

Chair Ateljevich – It's that shelf area – we've got that.

Commissioner Lovitt – But I'd still like to see something about how things can be built there, you know things like that and just limit to 27.

Chair Ateljevich - more analysis of 27 in terms of how buildable.

Commissioner Chastain said he wanted more information. We all have a picture in our head of what we might want on this property and that's not what we are asking for. It's what do we need to actually have a reasonable discussion. I need to have real uses because our problem is just not on the property, but it's also on the street; it's the entire area that is influenced by that. And so I think I also need particular uses and say three alternatives – different ways that that property could be developed so we can understand what the potentials are and what the ramifications are.

Chair Ateljevich - It's almost like you have to hire an architect to develop different scenarios.

Commissioner Holt – Is that beyond the staff capability, Niroop? What Tom was suggesting.

Ms. Srivatsa – Tom, I clearly understand what you're asking for. We need a designer to do some studies to see what you see from highway 24 on the shelf – what Pleasant Hill and Deer Hill will look like. In addition, if we had that intensity of development – what would it do to the traffic impacts.

Commissioner Chastain – And that's looking at uses, correct?

Ms. Srivatsa – It is. And we can choose a range of views – and apply them to the site and see.

Commissioner Humann – My question, Niroop – is maybe I misunderstood – aren't we kind of cut off at the knees in funding for this or . . .

Commissioner Lovitt – You've got to go back for one more bite.

Ms. Srivatsa – You know, it's not going to be $140,000, which the specific plan was going to cost. It will be far less to do this. And it's important – and I'll talk to the City Manager and see if we have the funding.

Commissioner Chastain asked if we could try out different options in terms of zoning as part of that too and maybe what it could come back to us and say here's what we are going to try and it's not as if that's an actual design for the site but it tells us a lot about what the capacity of that area is. It will be good at least to understand what the programs might be.

Chair Ateljevich asked if that's the whole side of site 27 and also for the two corner and the gas station?

Commissioner Humann – Yeah, I was going to ask - do we want to include that as well?

Chair Ateljevich - Yeah.

Commissioner Lovitt – I'm not sure how much we're going to be able to find out about the gas station site.

Commissioner – But don't you think that's an important site?

Commissioner Lovitt – Oh, it is. But I mean it's 100% visible – there it is.

Chair Ateljevich - I don't expect it to be invisible. I think that frankly, the notion that something right on a busy highway has to be invisible is tough to meet.

Commissioner Lovitt – Right, it just has to designed well. Designed well and good use of that area.

Chair Ateljevich - then we can worry about what ramifications that has for changing the zoning once we know what we need to do.

Vice Chair Mitchell – I would like two things. One, specifically with regards to site 27 and 28 is what the Chair recommended right from the beginning and that is the slope density calculations. The other thing I would like to know is what traffic constraints there might be on 27 and how cars would be able to stop coming down the hill or whatever access and just confirm the access issues with regards to 28 as well.

Commissioner Lovitt – I have to jump into Commissioner Chastain's territory here. The thing I don't want to do in looking at various uses is to make them either so broad or so tight that we end up losing the vision of what we want this end of town to be.

Commissioner Holt asked Chair Ateljevich if the Commission should go forward with a motion.

Chair Ateljevich stated the Commission can just continue the public hearing for a period of time to give staff a chance to prepare the items requested of them.

Ms. Sinnette wanted to confirm the items the Commission was asking staff to provide. They are a slope analysis for the entire site; an attorney opinion on the split zoning and how that affects the properties in general; and a conceptual plan or holding capacity type of plan for parcels 27 and 28, including information on circulation and traffic constraints.

Commissioner Lovitt stated he was looking for more of a massing study which would help the Commission determine the range of uses effectively.

Commissioner Holt stated he agreed with Commissioner Lovitt and would like to take it one step further. He felt that some of the issues pertaining to traffic were too specific. He felt the Commission needed some conceptual plans and massing done and that the Commission shouldn't get ahead of themselves since it is not known what the mitigations are.

Commissioner Humann felt the discussions of uses and the options identified by Commissioner Holt were important.

Commissioner Holt agreed.

Commissioner Humann felt massing isn't restricted and that it needs to be discussed.

Commissioner Lovitt indicated it may be used as a second step after they determined the kinds of things they can do.

Commissioner Humann stated the Commission might as well give their wish list, or as many items as they can think of right now.

Ms. Srivatsa indicated staff will come back with the program where all options will be reviewed – from multi-family units versus commercial or offices.

Commissioner Chastain stated this is not the plan for the site. He didn't see how it constrains the Commission's thinking and that it is purely a more thorough test of what it is that's there that gives him additional information needed to make a decision.

Ms. Sinnette stated one item to contend with once a program is in place is accessibility to the site since it has been very difficult to obtain access to parcel 27 in the past.

Chair Ateljevich suggested a site visit be scheduled once options are determined.

Ms. Sinnette indicated she, along with Ms. Srivatsa will prepare a program based on the Commission's requests for information tonight and bring it back to them for review at the October 19th meeting since the October 5th meeting already has a full agenda.

Ms. Srivatsa stated for the record, staff will be testing different land use options and some building density options, and wants to make it clear that in no way does this mean the City will choose a 5-story multi-family building for the site.

Chair Ateljevich asked for a motion for continuance of the item to the October 19th meeting.

Vice Chair Mitchell moved and Commissioner Chastain seconded to continue the public hearing to the October 19th Planning Commission meeting.

AYES: Ateljevich, Chastain, Holt, Humann, Lovitt, and Mitchell
NOES: None
ABSENT: Harris
ABSTAIN: None

7. NEW PUBLIC HEARINGS

A. LLR07-06 LAFAYETTE REDEVELOPMENT AGENCY (APPLICANT AND OWNER), C-1 ZONING: Request for a lot line adjustment to merge three parcels into one parcel for the Lafayette Library and Learning Center, located at 3490 Golden Gate Way, APN 243-231-014, 243-231-019, and 243-231-020.
Recommendation: Adopt Planning Commission Resolution 2006-20 approving LLR07-06.

Project Planner: Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org
(Estimated time: 10 min*)

Chair Ateljevich asked if any of the Commissioners had a condition they wanted to impose. With none received, Chair Ateljevich asked for a motion.

Vice Chair Mitchell moved and Commissioner Holt seconded to adopt the lot line adjustment as submitted.

AYES: Ateljevich, Chastain, Holt, Humann, Lovitt, and Mitchell
NOES: None
ABSENT: Harris
ABSTAIN: None

8. OTHER BUSINESS

A. LIAISON ASSIGNMENTS OCTOBER THROUGH DECEMBER, 2006
Recommendation: Please remember to bring your calendars

Commissioner Holt inquired about the status of his request for a legal opinion from the City Attorney on a conflict of a judgment on an item that was approved 8 to 10 years ago based on current zoning when he attended a meeting a couple of weeks ago as liaison on the Design/Review Commission.

Ms. Srivatsa indicated since the item is not agendized for discussion, it cannot not be discussed; but that staff has met on the issue and a report will be forwarded to the Commission.

Chair Ateljevich stated she will serve as liaison on September 12th.

City of Lafayette Staff Report

For:	Planning Commission
By:	Christine Sinnette, Senior Planner
Date Written:	November 6, 2007
Meeting Date:	November 15, 2007
Subject:	Preparation of conceptual design studies for two properties located at 3233 Deer Hill Road (APN 323-150-028) and 1175 Pleasant Hill Road (APN 232-150-027)

Planning Division staff have been working on City-initiated General Plan and zoning amendments for seven properties in the Eastern Deer Hill Road area. At their meeting of November 16, 2006, the Planning Commission directed staff to prepare a scope of work for a contract consultant to prepare conceptual bulk and mass design studies for the two properties that front on Pleasant Hill Road. (See attachments 1 and 2 for staff report and minutes.) Staff has received a scope of work from Design, Community & Environment (DC&E) to prepare the studies for a previously determined budget of $25,000. Prior to entering into a contract with DC&E, it was suggested at a joint City Council/Planning Commission/Design Review Commission meeting on September 24, 2007, that the Planning Commission review the scope of work prior to moving forward with the design studies (see attachments 3 and 4).

Given the limited budget and staff's experience with DC&E, staff did not send out a request for proposals for the design studies since DC&E had prepared similar studies for the City in the past (see Attachment 5 for example). It should be noted that the design studies are not all-inclusive and will not include a design for every possible development scenario. For example, a development scenario for a specific parcel may not include one, two or three story buildings for each possible residential, office, or institutional use as it is expected that building bulk and mass would be similar regardless of the specific land use.

STAFF RECOMMENDATION

Staff recommends that the Commission direct staff to enter into a contract with Design, Community & Environment to prepare conceptual design studies as described in the scope of work dated November 1, 2007.

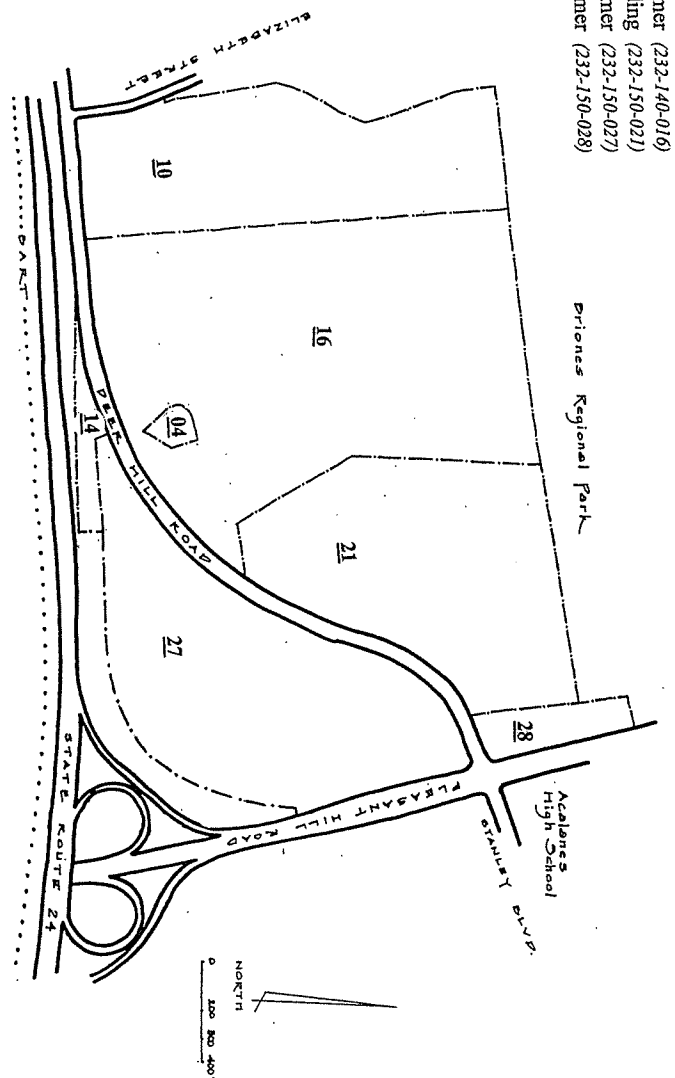
ATTACHMENTS

1. Eastern Deer Hill Road Parcels and Ownership
2. Staff Report and Minutes from the Planning Commission Meeting of November 16, 2006
3. Proposed Scope of Work for Conceptual Development Studies
4. Scope of Work from Design, Community & Environment, dated November 1, 2007
5. Examples from Downtown Conceptual Parking and Development Studies, prepared by Design, Community & Environment, 2006

ATTACHMENT 1

EASTERN DEER HILL ROAD

Parcels and Ownership



City of Lafayette Staff Report

For: Planning Commission

By: Christine Sinnette, Senior Planner

Date Written: November 7, 2006

Meeting Date: November 16, 2006

Subject: GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

BACKGROUND

This public hearing was continued to this date without consideration from the Planning Commission meeting of October 19, 2006. Although the Planning Commission reviewed the Eastern Deer Hill Opportunities and Constraints Analysis at their meeting on September 7, the Commission determined they still needed additional information on the possible development potential for the study area. The purpose of the continuance was to allow staff to respond to Planning Commission requests for more information. The following items were requested.

1. A legal opinion from the City Attorney on the affect split zoning has on the development potential and allowed density of a parcel.

2. A scope of work and estimated cost for a consulting civil engineer to calculate the average slope of specific properties in the study area.

3. Conceptual development studies for parcels 27 and 28, including bulk and mass studies and circulation and traffic constraints.

STAFF COMMENTS

City Attorney Malathy Subramanian prepared the following response to the Commission's question about split zoning on a parcel.

> To illustrate the result of split zoning, we will use the example of a nine acre parcel in the City that is divided by zoning districts such that 3 acres are zoned R-40 and 6 acres are zoned LR-10. If the owner pursues a subdivision of the 3 acres zoned R-40 to be divided into three lots, the remaining 6 acre parcel zoned LR-10 cannot be developed with a dwelling unit or as a separate lot under a LR-10 zoning designation, as it does not meet the minimum lot area requirement of 10 acres. It should be noted that the minimum lot area of an existing L-R parcel that is less than 10 acres on July 8, 2002 (the date when the new hillside regulations and LR-10 rezonings were adopted) is the area of the parcel that existed on that date. In this case, if the parcel existed as of July 8, 2002, a single family residence could be permitted on the 9 acres. However, because the owner has decided to subdivide the parcel, the remaining parcel will now become 6 acres and will no longer be grandfathered in with the lower minimum lot area for LR-10. Therefore, the owner can either subdivide the 3 acre lot, which will cause the remaining 6 acres to further nonconform to the LR-10 zoning or the owner can develop one single family residence on the existing 9 acres under the LR-10 zoning.

Regarding the slope analysis, staff requested that Schell & Martin, Inc., a local civil engineering firm familiar with Lafayette's hillside regulations and average slope calculation formula, prepare a proposal based on the following scope of work. Schell & Martin has estimated that the fee would be between $2,000 and $3,500.

- ✓ Calculate average slope for each of the seven parcels.
- ✓ Calculate average slope of the R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021.
- ✓ Calculate square feet/acres of land with slope of 15 percent or less in R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021 and on parcels 232-150-027 and 232-150-028.
- ✓ Calculate square feet/acres of land with slope of 30 percent or less in R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021 and on parcels 232-150-027 and 232-150-028.
- ✓ Calculate average slope on 232-150-027 for the area northeast of the drainage channel.
- ✓ Calculate average slope on 232-150-027 for the area southwest of the drainage channel.

The Commission's third request was for a program or scope of work to prepare a conceptual development plan for parcels 27 and 28. In preparing the scope of work, staff specified that the conceptual development studies should test different land use and density options for multi-family residential and office uses. The scope of work is an outline only; a more formal request for proposals will be prepared following the Commission's review and direction to staff. Once the conceptual development studies are completed, they will be analyzed by the City's traffic consultant.

STAFF RECOMMENDATION

Staff recommends that the Commission review the scopes of work for the slope analysis and conceptual development studies and direct staff to proceed with requests for proposals. The public hearing should be closed at this time. Future public hearings will be duly noticed as required by law.

Conceptual Development Studies for Eastern Deer Hill Area

Scope of Work

Purpose: Prepare conceptual studies showing the potential development capacity for two properties in the Eastern Deer Hill Area. The properties are APN 232-150-027 (parcel 27) and APN 232-150-028 (parcel 29). Parcel 27 is 22.26 acres and parcel 28 is 1.91 acres. Both parcels are zoned APO – Administrative/Professional Office District.

Policy Considerations: The conceptual development studies shall be based on the following intent, goal, and policies of the General Plan as they relate to the Deer Hill Road corridor and entryway to Lafayette (ignore references to a specific plan).

Deer Hill Road, a major arterial in Lafayette, runs parallel to Hwy 24 from Pleasant Hill Road to Happy Valley Road. As stated in the Circulation Element, the primary traffic generator along this arterial is the BART station and its attendant parking lots. Both the freeway and Deer Hill Road serve as dividing lines between the Downtown to the south and the semi rural single-family residential neighborhoods to the north. The development allowed under current zoning along the Deer Hill Road corridor must be consistent with Lafayette's semi rural community identity.

Eastern Deer Hill Road (from Elizabeth Street east to Pleasant Hill Road). This area, particularly the triangular shaped parcel south of Deer Hill Road, is the most significant undeveloped property in the community because of its high visibility, its location as an entryway to the community, and its proximity to major thoroughfares as well as regional open space. For these reasons, any development that occurs should be consistent with the semi-rural character of the community. This area deserves a careful and detailed analysis of all the opportunities and constraints that will form the basis of future land use decisions.

Goal LU-13: Ensure that the Eastern Deer Hill Road area near the intersection of Pleasant Hill Road is developed, where development is appropriate, in a manner consistent with Lafayette's community identity.

Policy LU-13.1	Preserve and enhance the semi rural single-family residential character north of Deer Hill Road where not adjacent to Pleasant Hill Road.
Policy LU-13.2	Consider options for development south of Deer Hill Road and north of Deer Hill Road where adjacent to Pleasant Hill Road.

Program LU-13.2.2: Prepare through a community planning process an Eastern Deer Hill Road Specific Plan that includes the following requirements:

a) Protect and enhance the rural character of the area north of Deer Hill Road where not adjacent to Pleasant Hill Road.
b) Preserve prominent views.
c) Include development standards that maintain the semi-rural character of the area and the community.
d) Utilize the property south of Deer Hill Road to help communicate the image of Lafayette as a semi-rural community.

Policy LU-5.1 Residential Entryways: Residential entryways to the City should be distinctive and attractive features of the City's landscape.

Program LU-5.1.2: Prepare a specific plan for the following entryways and establish appropriate design guidelines: Acalanes Road, ...Consider preserving the northwest corner of Pleasant Hill Road and Highway 24 in as natural a state as possible. These plans should seek to:

1) Incorporate design features that create a semi-rural atmosphere,
2) preserve prominent views by limiting the height of development, where necessary,
3) provide distinctive native landscaping, and
4) increase setbacks from the street.

Development Criteria: The conceptual development studies shall use the existing topographical base map prepared by HJW and the Eastern Deer Hill Opportunities and Constraints Analysis. Development shall conform to the standards listed below.[1] Development shall assume that site grading will be kept to a minimum or would primarily constitute grading within building foundation walls. Below ground parking can be considered. Each development concept (task) shall include the assumed number of dwelling units, square footage of office/institutional space, and number of parking spaces. The studies should also incorporate points of ingress and egress to the sites and how they relate to existing constraints such as roadway grades, medians, and signalized intersections.

The deliverables for each task shall include a site plan, appropriate number of cross-sectional drawings to illustrate potential cut and fill and building elevations and cross-sectional drawing(s) of the mass and scale of development as seen from adjacent public rights-of-way including State Highway 24 and Pleasant Hill Road. A 15-degree declination study shall be included for any development within the ridgeline setback area pursuant to Chapter 6-20, sections 6-2023(c) and 6-2029.

[1] Excluding parking, site development standards are based on the standards of the APO district.

Height

(a) Buildings shall not exceed the height limitations indicated in Figure 6-1006 (see copy of APO zoning description).
(b) If any portion of a building or structure lies across the boundary line of a height limitation area, the minimum height requirement of the most restrictive area will apply.

Side yards

Side yards shall be at least 50 feet wide.

Rear yards

Rear yards shall be at least 25 feet wide.

Setback from public right-of-way

One-story structures shall be at least 25 feet from the right-of-way of any public street and multiple-story structures shall be at least 50 feet from the right-of-way of any public street. No parking shall be allowed in the area separating a structure from a public right-of-way and the area shall be landscaped.

Landscaping

Twenty percent of the property shall be landscaped.

Parking

Residential: 1.5 parking spaces per unit; 1 guest parking space for each 5 units
Offices: 1 space per 250 square feet of gross floor area.

Tasks: Each task will study a development concept as outlined below.

Task 1 – Area of parcel 27 located northeast of the drainage channel (approximately 1.76 ac.)

1.A Single-story office uses
1.B Low-density single-family residential (2 dwelling units/acre)
1.C Two-story low-density multifamily residential (maximum 17 dwelling units/acre)
1.D Three-story low density multifamily residential (maximum 17 dwelling units/acre)

Task 2 – Area of parcel 27 located southwest of the drainage channel (approximately 20.49 ac.)

2.A Two-story office/institutional uses
2.B Clustered low-density single-family residential (17 dwelling units/acre)
2.C Two-story low density multifamily residential (17 dwelling units/acre)
2.D Three-story low density multifamily residential (17 dwelling units/acre)

Task 3 – Parcel 28 (approximately 1.91 ac)

3.A Single-story office use
3.B Two-story office use
3.C Two-story low density multifamily residential (17 dwelling units/acre)

DESIGN, COMMUNITY & ENVIRONMENT

1625 SHATTUCK AVENUE
SUITE 300
BERKELEY, CA 94709
TEL: 510 848 3815
FAX: 510 848 4315

November 1, 2007

Ms. Christine Sinnette
City of Lafayette
3675 Mt. Diablo Boulevard
Lafayette, CA 94549

Re: Deer Hill Road Design Studies

Dear Christine:

Thank you for requesting a proposal from DC&E to conduct the design studies for the two parcels strategically located along Deer Hill Road. We understand the significant role these parcels play in conveying the City's unique rural character. DC&E looks forward to developing the design studies for these parcels that build upon the *Eastern Deer Hill Opportunities and Constraints Analysis* in coordination with existing goals and policies.

After reviewing the scope of work prepared by the City and the *Eastern Deer Hill Opportunities and Constraints Analysis* we have prepared the scope of work, schedule and cost proposal, as detailed below.

1 SCOPE OF WORK

We propose a series of tasks that will provide the City with a better understanding of the development potential of Parcels 27 and 28. In Tasks A, B, and C, DC&E will study development prototypes for specific sites on these parcels. Each of the studies outlined in these tasks will include the number of assumed dwelling units, the square footage of office/institutional space, the number of parking spaces, and points of ingress and egress in relation to site constraints. Deliverables for each task will include a site plan, building elevations, massing diagrams and the appropriate number of cross-sectional drawings to illustrate potential cut and fill required of specific development concepts. DC&E will also prepare 15-degree declination studies for development concepts on any parcels or areas of parcels within the City's Ridgeline Setback.

The design studies will use the existing topographical base map and *Eastern Deer Hill Opportunities and Constraints Analysis*. DC&E assumes that the City will provide digital copies of these files.

Task A. Northeast Parcel 27 Design Studies

Northeast Parcel 27 is a 1.76-acre site located northeast of the drainage channel in parcel 27. DC&E will study the following development prototypes for this site:

- Single-story office uses
- Low-density single-family residential (2 dwelling units/acre)
- Two-story low density multi-family residential (maximum 17 dwelling units/acre)
- Three-story low density multi-family residential (maximum 17 dwelling units/acre)

Task B. Southwest Parcel 27 Design Studies

Southwest Parcel 27 is an approximately 20.49-acre site located southwest of the drainage channel in Parcel 27. As a portion of this site is within a Class 1 Ridgeline Setback, 15-degree declination studies will be included as appropriate. The development prototypes for this site include:

- Two-story office/institutional uses
- Clustered low density single-family residential (17 dwelling units/acres)
- Two-story low density multi-family residential (17 dwelling units/acre)
- Three-story low density multifamily residential (17 dwelling units/acre)

Task C. Parcel 28 Design Studies

Parcel 28 is an approximately 1.91-acre site. As the entire site falls within Class 1 Ridgeline Setback area, this task will include 15-degree declination studies. Due to its parcel size and topography, the site is constrained. Therefore, variances to existing setback ordinances may need to be studied with appropriate mitigations. The development prototypes for this site include:

- Single-story office use
- Two-story office use
- Two-story low density multifamily residential (17 dwelling units/acre)

Task D. Planning Commission Hearing (optional task)

If desired by the City, DC&E will attend one Planning Commission hearing to present an overview of the Design Studies and answer questions.

II SCHEDULE

DC&E is able to commence work on any of the tasks listed above as soon as we receive the City's authorization to proceed, and obtain a digital copy of the topographic base drawing for the sites. The design studies will be submitted to City staff in advance of the Planning Commission hearing scheduled for February, 2008.

III COST

DC&E has developed the series of tasks detailed in Section I based on the City's RFP. The costs for each of the tasks are shown below.

Task A Northeast Parcel 27 Design Studies	$7,500
Task B Southwest Parcel 27 Design Studies	$8,500
Task C Parcel 28 Design Studies	$8,500
Task D Planning Commission Hearing (Optional Task)	$500

DC&E will complete the tasks in this scope of work for fixed fees not to exceed these amounts. DC&E guarantees that it will complete a contracted scope of work for the contracted cost. Any in-contract overruns are absorbed by the firm and are not passed on to the client.

If you should desire, we can refine or adjust the scope of work detailed in Section I.

Please do not hesitate to contact me if you need more information. DC&E looks forward to working with you on these exciting and strategic studies for Lafayette.

Sincerely,

Tom Ford

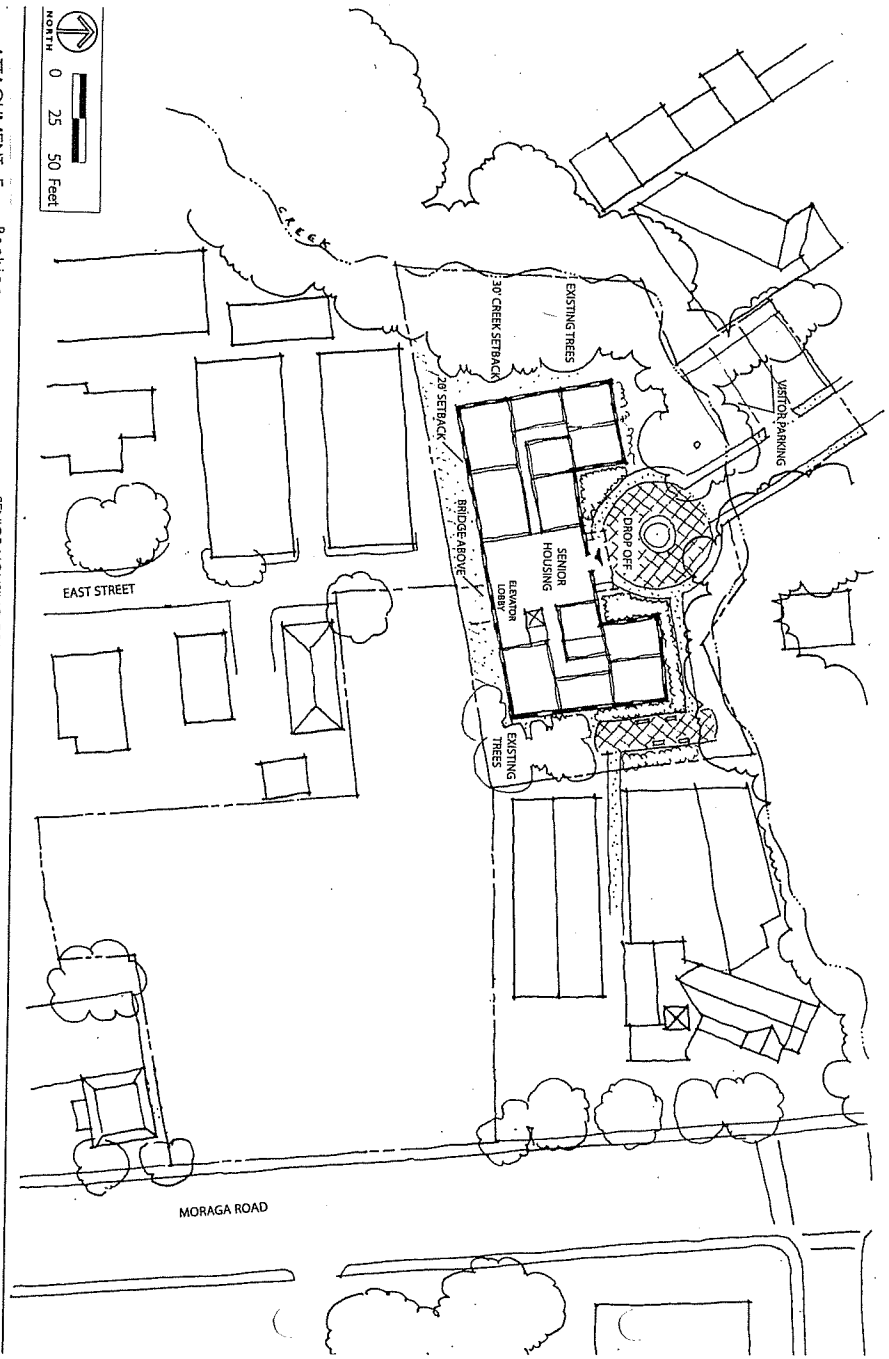
Tom Ford, AICP
Principal

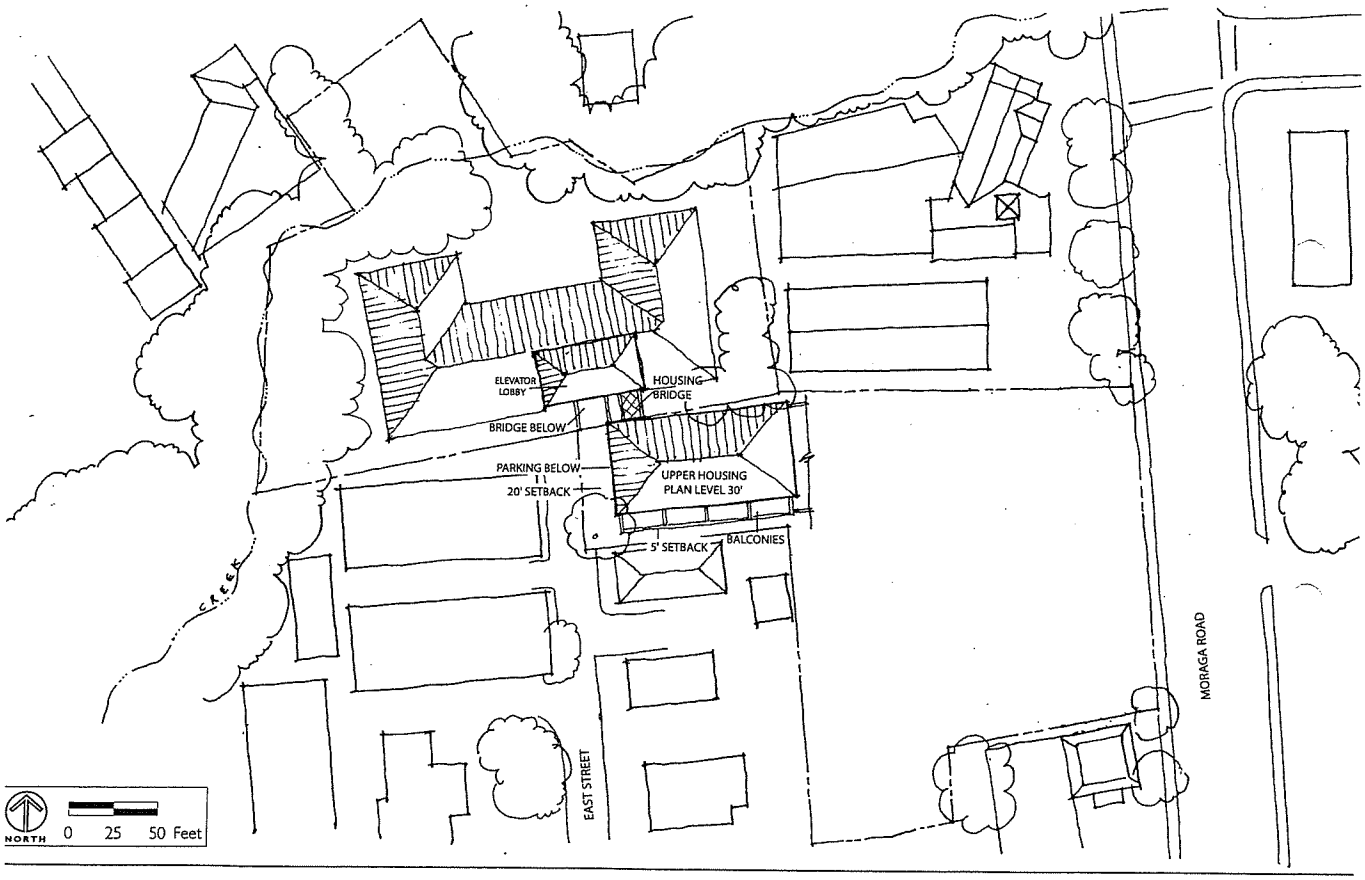
ATTACHMENT 5 Parking es

SENIOR HOUSING CONCEPTUAL PLAN - PLAN LEVEL 0

FEBRUARY 16,2006

Design, Community & Environmen
Berkeley, Californi

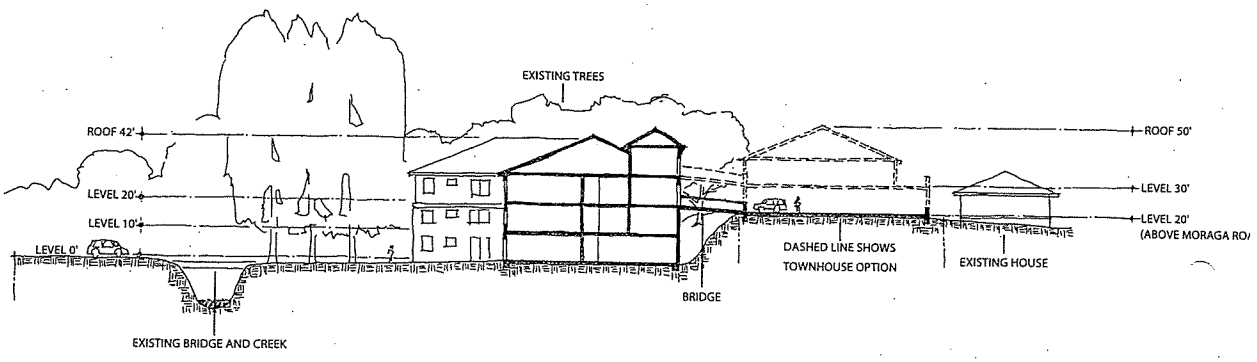


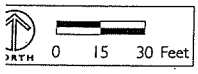


owntown Conceptual Parking
nd Development Studies
ity of Lafayette

SENIOR HOUSING CONCEPTUAL PLAN - UPPER HOUSING OPTION
FEBRUARY 16, 2006

Design, Community & Environment
Berkeley, California





wntown Conceptual Parking
d Development Studies
ity of Lafayette

SENIOR HOUSING ALTERNATIVE
FEBRUARY 16, 2006

Design, Community & Environment
Berkeley, California

TOWNHOUSE ALTERNATIVE
FEBRUARY 16, 2006

Design, Community & Environment
Berkeley, California

Ms. Sinnette had left her recommendation open ended since she was not sure what the Commission was going to decide. If they are comfortable with recommending approval, staff can come back on consent with a specific resolution and findings or they can just go ahead and calendar it as a continued public hearing.

Commissioner Lovitt moved and Commissioner Ateljevich seconded to recommend approval and to bring the item back on Consent.

AYES: Ateljevich, Curtin-Tinley, Holt, Lovitt, and Mitchell
NOES: None
ABSENT: Chastain and Humann
ABSTAIN: None

9. OTHER (Estimated 11:15 PM)

A. EASTERN DEER HILL ROAD DESIGN STUDY: Consider preparation of conceptual design studies for two properties located at 3233 Deer Hill Road (APN 232-150-028) and 1175 Pleasant Hill Road (APN 232-150-027).
Recommendation: Direct staff to enter into a contract with Design, Community, and Environment to prepare conceptual design studies.
Project Planner: Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org
(Estimated time: 15 min*)

Project Planner Christine Sinnette reported staff has been working on City-initiated General Plan and zoning amendments for seven properties in the Eastern Deer Hill Road area. Staff was directed at the November 16, 2006 meeting to prepare a scope of work for a contract consultant to prepare conceptual bulk and mass design studies for the two properties that front on Pleasant Hill Road. Staff has received a scope of work from Design, Community & Environment (DC&E) to prepare the studies for a budget of $25,000. Prior to entering a contract with DC&E, it was suggested at a recent joint meeting that the Planning Commission review the scope of work prior to moving forward with the design studies.

Commissioner Ateljevich felt a slope analysis is needed in order to give them an idea of how many single family homes could be built on the property to comply with the Hillside Ordinance. We have to have that information before we can go any further.

Commissioner Mitchell asked if any one from the public wanted to speak.

Mike Henn approached the podium and stated he only wanted to say that his client and her attorney were happy to see this range in comparison to what they started off with.

Commissioner Mitchell asked Mr. Henn to clarify something for him. At a previous Planning Commission meeting, the owner's attorney submitted a letter recommending that the current APO zoning stay in place but then they went on saying the reason why they wanted it was because the APO would allow for multiple residential.

Mr. Henn confirmed that was correct but given fluctuating market conditions there was a perception that the likely use was probably multi-family residential but they did not want to preclude office particularly down on the Christmas tree lot area but they didn't see it as likely as multiple residential as on the upper flat parts. What they really want to do is preserve their options.

Commissioner Ateljevich said that given the recent earthquake on the property, it makes her not want to put a lot of density there. Secondly, it is a mapped ridgeline. Also, the soils on the old gasoline station site are visibly falling apart. This is not an area where I think we should be looking for any kind of density. I don't see any point in wasting City money in trying to decide what the density might be. That is the applicant's job. We should complete what we started three years ago which was a rezoning to the lowest possible density. The applicant always has the option to come back in with a good proposal and we can change our minds. But this way we are trying to design a property that we don't have all the tools for or money for in any great quantity. We are not designers; we are planners and we are trying to do something that we can't do intelligently. If we can't do it intelligently then I don't want any part of it. So I think we are just putting off the inevitable. We need those slope studies and need to apply them in terms of single family density. Then if or when the applicant wants to come in with a good, wonderful multiple or office, or whatever proposal then the City can look at it carefully and analyze it and see if it works.

Vice Chair Mitchell felt they should stick with the residential zoning per the City Council's direction in 2001. We should leave off the expensive study we will never be able to afford and look at the slope calculations for our next meeting.

Chair Holt agreed the study would be too difficult and not within their scope. He is of the opinion that the City should be open to development and would like to keep their options open down the road. Perhaps the applicant can come forward with a plan that makes sense so that they can look at it.

Ms. Sinnette indicated since staff was directed specifically to prepare the studies, the direction would have to be rescinded. Staff will publicly notice the meeting, come back with the slope density study at the second meeting in January, re-present the three options available for determination, and forward the item to the City Council for consideration.

Commissioner Ateljevich moved and Commissioner Lovitt seconded to rescind the request to prepare conceptual design studies for the two properties that front on Pleasant Hill Road.

AYES: Ateljevich, Curtin-Tinley, Holt, Lovitt, and Mitchell
NOES: None
ABSENT: Chastain and Humann
ABSTAIN: None

B. JOINT CITY COUNCIL, PLANNING COMMISSION, DESIGN REVIEW COMMISSION MEETING GROUND RULES
Recommendation: Provide comments to staff
Project Planner: Niroop K. Srivatsa, Tel (925) 299-3206, nsrivatsa@lovelafayette.org
(Estimated time: 15 min*)

Project Planner Niroop Srivatsa stated draft ground rules for conducting joint pre-application meetings are before the Planning Commission for review and comments. Comments from the Design Review Commission are attached to the staff report, as well as comments from Commissioners Lovitt and Lee. The item will be forwarded to the City Council for consideration upon review by the Commission tonight.

Commissioner Ateljevich felt Item 2C, with reference to development which includes an affordable housing component, should be deleted as it will affect too many projects.

Commissioner Curtin-Tinley suggested 2A & 2B be combined, as a project would not come forward with just a development agreement.

Vice Chair Mitchell would like materials submitted an hour prior to the item being heard. He would also propose a time frame of an hour for the applicant's presentation, 20 minutes for questions, and 20 minutes for public comments. Commissioner Ateljevich did not agree to the time limit for questions. Chair Holt would also shy away from restrictions as it is up to the person running the meeting to limit the time for presentations.

Commissioner Lovitt believed the meetings are for delivering a concept, not a presentation of a project. The briefer they can make the presentation, the less specific they can get. He would not want to encourage too much specificity which can lead to an approval process. Chair Holt would rely on staff to set up a pre-meeting with the applicant to discuss the best way to utilize their time to convey their concept and to receive input.

Vice Chair Mitchell retracted his suggestion on time limitations based on his colleague's feedback.

Commissioner Curtin-Tinley suggested 1B be stricken and 1C & 1D be combined. She also suggested the reference to open space in Item No. 4 be deleted as all planned developments features open space.

Vice Commissioner Mitchell indicated he would like development agreements to be more of a public process and is concerned agreements, at times look like finished documents when it got to them. Ms. Srivatsa indicated development agreements, when submitted as part of an application, are required to go before the Planning Commission. The Commission has the authority to make a recommendation for approval or denial to the City Council. Staff will do a better job of highlighting the points in future staff

Item 7B

City of Lafayette Staff Report

For: Planning Commission

By: Christine Sinnette, Senior Planner

Date Written: February 13, 2008

Meeting Date: February 21, 2008

Subject: GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

BACKGROUND

Planning Division staff have been working on City-initiated General Plan and zoning amendments (GP03-04 and RZ02-04) for seven properties in the Eastern Deer Hill Road area (see Attachment 1 – Parcels and Ownership). The subject properties are listed below with their General Plan and zoning designations. See attachments 2 and 3. For future discussion, the parcels are identified by the last two digits of the Assessor's parcel number.

Eastern Deer Hill Road Properties

Properties	Property Owner	Current General Plan	Current Zoning
APN 232-140-014	State of California	Administrative/Professional/ Office/Multifamily Residential	APO
APN 232-150-027	AMD Trust (Dettmer)	Administrative/Professional/ Office/Multifamily Residential	APO
APN 232-150-028	AMD Trust (Dettmer)	Administrative/Professional/ Office/Multifamily Residential	APO
APN 232-140-004	Naglicki	Low Density Single Family Residential	R-20
APN 232-140-010	AMD Trust (Dettmer)	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10
APN 232-140-016	AMD Trust (Dettmer)	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10
APN 232-150-021	Holding	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10

Attachment 4 contains a chronology of the City's actions related to the Eastern Deer Hill Road area from April 19, 2001 to January 14, 2008. The purpose of this hearing is to review the average slope calculations prepared at the request of the Planning Commission.

STAFF COMMENTS

Under contract to the City, average slope calculations were prepared by Schell & Martin, Inc., a local civil engineering firm familiar with Lafayette's hillside regulations and average slope calculation formula. Average slope was calculated pursuant to section 6-2044(a), LMC. Their scope of work is listed below and their results are included as Attachment 5.

1. Calculate average slope for each of the seven parcels.
2. Calculate average slope of the R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021.
3. Calculate square feet/acres of land with slope of 15 percent or less in R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021 and on parcels 232-150-027 and 232-150-028.
4. Calculate square feet/acres of land with slope of 30 percent or less in R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021 and on parcels 232-150-027 and 232-150-028.
5. Calculate average slope on 232-150-027 for the area northeast of the drainage channel.
6. Calculate average slope on 232-150-027 for the area southwest of the drainage channel.

ATTACHMENT 9

Based on the Schell & Martin average slope calculations and application of the lot area and density table in section 6-2043, staff has prepared the following table.

Property Number	14	27	28	04	10	16	21
Property Size	1.36 ac.	22.26 ac.	1.91 ac.	.5 ac.	17.81 ac.	38.13 ac.	20.75 ac.
Average Slope of Total Lot	30.9%	24.3%	26.7%	21.0%	42.4%	37.3%	34.0%
Maximum Allowed Density per §6-2043	.48 du[1]	14.0 du[1]	.95 du[1]	.38 du	1.78 du	5.33 du	4.77 du
Current Zoning	APO	APO	APO	R-20	Split R-20 & LR-10	Split R-20 & LR-10	Split R-20 & LR-10
Area Zoned R-20	---	---	---	---	10.13 ac.	11.89 ac.	5.32 ac.
Average Slope of R-20 Portion	---	---	---	---	18.1%	35.8%	27.0%
Max. Density Per §6-2043 for R-20 Portion	---	---	---	---	10.13 du	2.37 du	2.39 du
Area of ≤15% slope in R-20 Portion	---	---	---	---	1.23 ac.	1.97 ac.	1.69 ac.
Area of ≤30% slope in R-20 Portion	---	---	---	---	3.88 ac.	4.37 ac.	2.88 ac.
Area of ≤15% slope	---	8.18 ac.	.71 ac.	---	---	---	---
Area of ≤30% slope	---	13.97 ac.	.81 ac.	---	---	---	---
Size of Upper Portion	---	20.49± ac.	---	---	---	---	---
Size of Lower Portion	---	1.76± ac.	---	---	---	---	---
Average Slope of Upper Portion	---	20.17%	---	---	---	---	---
Average Slope of Lower Portion	---	12.4%	---	---	---	---	---
Max. Density Per §6-2043 for Upper Portion	---	17 du[1]	---	---	---	---	---
Max. Density Per §6-2043 for Lower Portion	---	N/A (slope less than 15%)	---	---	---	---	---

[1] Only applicable if property is subject to Chapter 6-20.

In looking at the seven properties relative to their zoning designation, lot size, topography, biotic resources, applicability of hillside development regulations including slope vs. density and ridgeline setback areas, the development potential of each lot becomes clearer. Parcel 04 is zoned R-20, is 21,780 square feet in size and developed with one single-family home. Its development potential under the R-20 zoning designation is only one dwelling unit so there is no need for further analysis of Parcel 04.

Although Parcel 10 has a relatively flat area adjacent to Deer Hill Road appropriate for development, this 17.81-acre property is severely constrained by its 42 percent average slope. Regardless of the zoning designation, the maximum allowed density for Parcel 10 is one dwelling unit. There is, however, a caveat to the one dwelling unit limitation. Section 6-2044(b) can allow for an applicant to request that parts of the unsubdivided parcel be excluded in the average slope calculation. In order to be excluded, the area must consist of a distinct topographical feature such as a deep ravine, creek bank, or a slope which varies substantially from and is inconsistent with the topography of the remainder of the parcel. The total excluded area cannot be greater than 25 percent of the total area of the unsubdivided parcel. The excluded area must be approved by the planning manager with the manager's determination subject to appeal to the planning commission. Parcel 10 includes a well-established drainage system with fresh water marsh and seep vegetation. If an exclusion is allowed, the density range for Parcel 10 could be between 3 and 11 dwelling units depending on the resulting average slope. Only a small portion of the parcel is within the setback of a Class II ridgeline. See Attachment 6 – Ridgeline Delineation and Development Setback.

Based on the average slope of Parcel 16, the maximum density would be 5 dwelling units. The property is currently developed with two houses, at least one of which is currently vacant and has lost is nonconforming status. There is also a telecommunications facility located onsite. This property has a well established drainage system and has areas within Class I and Class II ridgelines and their setbacks. The density range for Parcel 16 could be between 2 and 5 dwelling units.

Parcel 21 is similar to Parcel 16 in its average slope (34 percent) and proximity to a Class I ridge. It is developed with a single family residence and outbuildings associated with a working small farm and livestock ranch. There is an active land use permit for a small-scale commercial recreation use. Most of the R-20 zoned portion is within the Class I ridgeline setback. Regardless of zoning or approval of an exclusion, the maximum density is likely to be four dwelling units.

As noted in the chronology in Attachment 4, the City and the public are most concerned about the properties zoned APO, Administrative/Professional Office District. This zoning designation has been carried over from when this area was under County jurisdiction and allows a wide variety of uses which may not be compatible with the General Plan goals and policies adopted for the Eastern Deer Hill Road area.

Another concern is that the APO zoning district is classified as "Office District" per chapter 6-10, LMC. Although parcels 14, 27, and 28 are located in the hillside overlay district, these properties would not be subject to the hillside development regulations of Chapter 6-20 because

they are not residential lots. As stated in section 6-2013, LMC, application of the hillside overlay district, "The regulations of this article [Hillside Overlay District] apply in the hillside overlay district to (1) a residential lot existing on July 8, 2002, (2) a division of land into two or more lots and, (3) to the extent provided in chapter 6-24, to a lot line adjustment approved after July 8, 2002." As currently zoned, they would only be subject to Chapter 6-20 if the properties were to be subdivided.

Parcel 14 consists of a narrow, southward sloping site overlooking Highway 24. If the property were zoned residential, it would be subject to Chapter 6-20. Based on the average slope of 30.9 percent, only one dwelling unit could be allowed on this property. Given the consistency in site topography, it is unlikely that a request for exclusion would be approved even if requested. Therefore, regardless of the zoning designation, it is likely that only one dwelling unit would be allowed on this 1.36-acre parcel. Parcel 14 is not located within a ridgeline setback area.

Parcel 28 is a 1.91-acre site located adjacent to Pleasant Hill Road. It is relatively level adjacent to the roadway then slopes steeply to the west. It was once developed with a gasoline station. If the property were zoned residential, it would be subject to Chapter 6-20. Based on the average slope of 26.7 percent, only one dwelling unit could be allowed on this property. Given the abrupt change in slope, this property may qualify for an exclusion if subdivided. However, there is less than one acre of land with a 30 percent or less slope, so regardless of the residential zoning designation, only one dwelling unit could be allowed. This parcel is entirely within a Class I ridgeline setback.

At 22.26 acres, Parcel 27 is the largest of the seven properties. It is developed with a residence and office buildings. It is physically divided by a drainage channel and topography into a 20.49± acre "upper" portion and a 1.76± acre "lower" portion adjacent to Pleasant Hill Road. It is the most visible of the seven properties and about one-third of the upper portion is located within a Class I ridgeline setback. If zoned residential it would be subject to Chapter 6-20. Based on the average slope of 24.3 percent, fourteen dwelling units could be allowed on the entire property. Based on the average slope of just the upper portion, 17 dwelling units could be allowed.

As directed by the City Council in August 2003, staff is to initiate a General Plan amendment for the seven parcels as outlined in the Eastern Deer Hill Road area and that parcels with APO zoning be changed to residential zoning. Given the Council's direction and based on the above analysis, staff recommends that the Planning Commission consider the following General Plan and zoning amendments.

Staff Recommended General Plan and Zoning Changes

Parcel	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
14	Administrative/Professional/ Office/Multifamily Residential	Low Density Single Family Residential	APO	R-20
27	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
28	Administrative/Professional/ Office/Multifamily Residential	Low Density Single Family Residential	APO	R-20
04	Low Density Single Family Residential	No Change	R-20	No Change
10	Low Density Single Family Residential and Rural Residential Single Family	No Change	Split R-20 & LR-10	No Change
16	Low Density Single Family Residential and Rural Residential Single Family	No Change	Split R-20 & LR-10	No Change
21	Low Density Single Family Residential and Rural Residential Single Family	No Change	Split R-20 & LR-10	No Change

PUBLIC NOTICE AND COMMENT

On February 6, 2008, a notice of public hearing was sent to property owners within 500 feet of the Eastern Deer Hill Road project boundary, the Lafayette Homeowners Council, Springhill Valley Association, Springbrook Neighborhood Association, Northridge Park Homeowners Association, Brown Avenue Homeowners Association, and Quandt Area Homeowners Association. A legal ad was published in the Contra Costa Sun on February 8, 2008. A letter from Guy Atwood was submitted in time to be included in this staff report. He continues to support an LR zoning on five of the parcels but supports a more flexible zoning on the far westerly property (parcel 10). See Attachment 7.

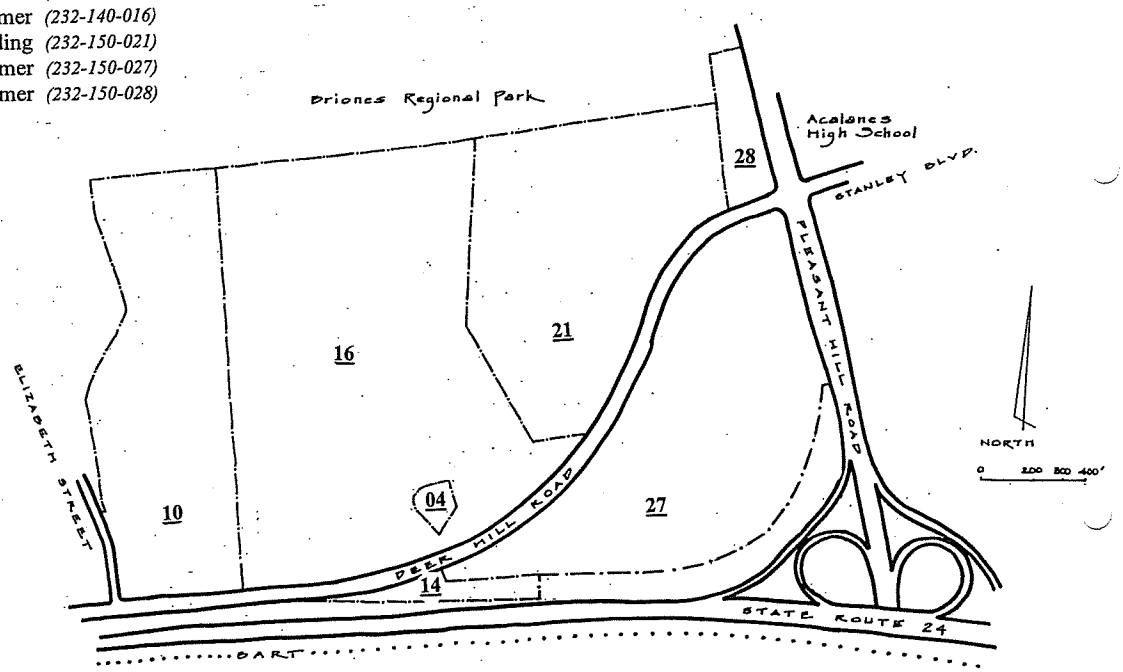
STAFF RECOMMENDATION

Staff recommends that the Planning Commission direct staff to proceed with a General Plan amendment to reclassify APN 232-140-014 and APN 232-150-028 to Low Density Single Family Residential and APN 232-150-027 to Rural Residential Single Family and change the zoning for APN 232-140-014 and APN 232-150-028 to R-20 and APN 232-150-027 to L-R-10.

ATTACHMENTS

1 Eastern Deer Hill Road Parcels and Ownership
2. Current General Plan and Zoning

04 Naglicki *(232-140-004)*
10 Dettmer *(232-140-010)*
14 Caltrans *(232-140-014)*
16 Dettmer *(232-140-016)*
21 Holding *(232-150-021)*
27 Dettmer *(232-150-027)*
28 Dettmer *(232-150-028)*



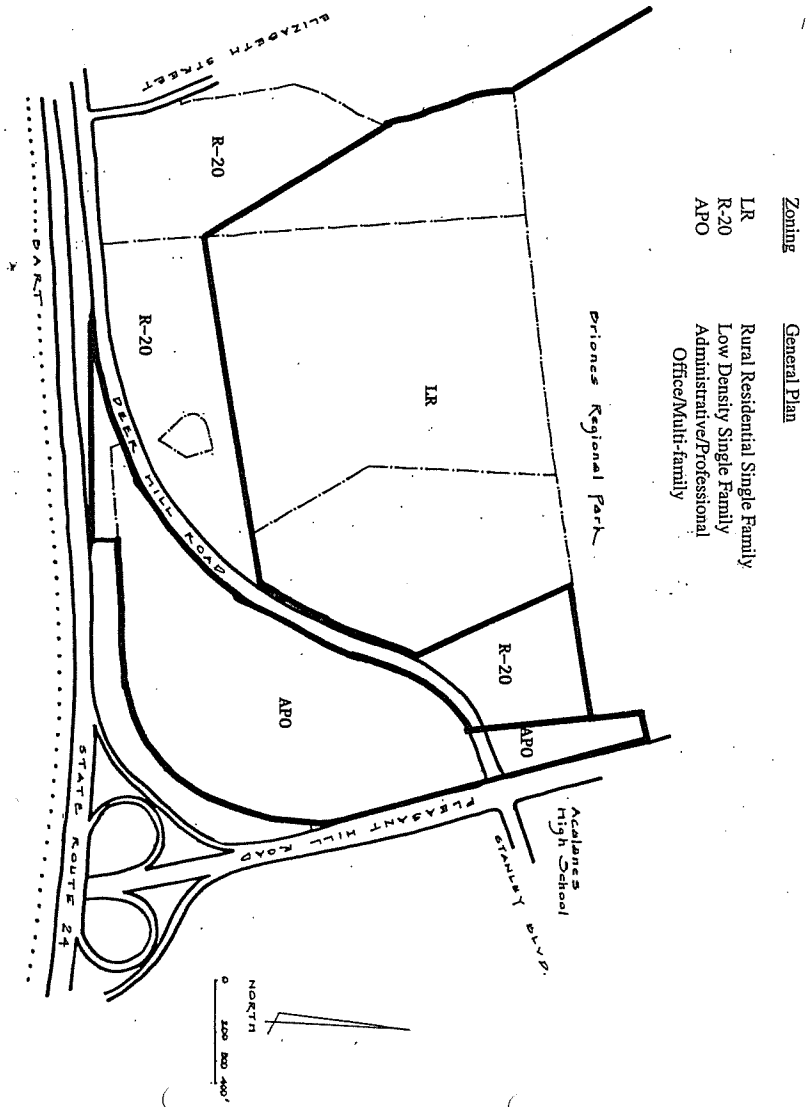
EASTERN DEER HILL ROAD

Parcels and Ownership

ATTACHMENT 1

3. Zoning District Excerpts – APO, R-20, LR
4. Background Chronology of Eastern Deer Hill Road
5. Slope Evaluation prepared by Schell & Martin, Inc., dated March 7, 2007
6. Ridgeline Delineation and Development Setback
7. Correspondence from Guy Atwood, dated January 11, 2008

ATTACHMENT 2



EASTERN DEER HILL ROAD

Current General Plan and Zoning

Zoning	General Plan
LR	Rural Residential Single Family
R-20	Low Density Single Family
APO	Administrative/Professional Office/Multi-family

GENERAL PLAN DESCRIPTIONS

Natural and Scenic Land Uses

Rural Residential: This designation is intended to retain hillsides in as nearly a natural condition as is feasible while allowing residential development which is subordinate to and supportive of preserving scenic views and the natural hillside character of the area. Houses shall be sited, designed and of such a size so as to blend into the natural environment and have minimal impacts on it. Visibility of any development shall be kept to a minimum. Development density shall not exceed 0.1 dwelling units per acre.

Residential Land Uses

Low Density Single Family Residential: Designates areas suitable for single-family dwellings at densities up to 2.0 dwelling units per acre.

Medium Density Single Family Residential: Designates areas suitable for single-family dwellings at densities up to 6.0 dwelling units per acre.

Commercial and Office Land Uses

Administrative/Professional Office/Multifamily Residential: This designation provides for a mixture of professional office and multifamily residential uses adjacent to Downtown that are close to public transit, shopping, and public facilities. The height limit in the Multifamily Residential/Office designation is 35 feet. The maximum density for multi-family residential uses is 35 units per acre. The maximum floor area ratio (FAR) for commercial uses shall not exceed 0.4.

LAFAYETTE
SETTLED 1848 — INCORPORATED 1968

Planning Services Division
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549-1968
Tel. (925) 284-1976 • Fax (925) 284-1122
http://www.ci.lafayette.ca.us

APO

Administrative/Professional Office District

6-1001 General.
6-1002 Purpose.
6-1003 Uses permitted.
6-1004 Uses requiring a permit.
6-1005 Lot area.
6-1006 Height.
6-1007 Side yards.
6-1008 Rear yards.
6-1009 Setback.
6-1010 Separation of structures from public right-of-way.
6-1011 Landscaping.
6-1012 Approval guidelines.
6-1013 Off-street parking and loading.
6-1014 Design review.
6-1015 Modifiable sections.

NOTE: The City has other regulations, which may affect individual properties, including, but not limited to hillside development, structures over 17-ft. in height, development in excess of 6,000 sq. ft., tree protection, grading, and public art. Please review the Project Checklist available on the City of Lafayette web site at www.lovelafayette.org for an overview of regulations that might apply. You may consult Planning Services Division staff to ascertain which rules and regulations apply to any given project.

Administrative/Professional Office District

6-1001 General.

All land in the administrative/professional office district (map symbol APO) shall be used in accordance with the provisions of this article. (Ord. 170 § 2 (part), 1976)

6-1002 Purpose.

The purpose of this article is to allow administrative and professional offices where such uses need not be located in the central area in order to best function to the benefit of the community, but where carefully conceived plans are necessary to provide comprehensive development that will assure safe, rational and functional internal and external circulation; design and landscaping compatible with unique, highly visible settings; the optimum in quality development; and development consistent with the goals, policies and other provisions of the general plan. (Ord. 170 § 2 (part), 1976)

6-1003 Uses permitted.

The following uses are permitted in the APO district:

(a) Offices of an administrative, executive, professional, editorial or similar nature, if no merchandise is handled for sale and no merchandising services are rendered except those incidental or accessory to the principal use;

(b) Professional offices and laboratories, such as medical-dental offices or the offices of lawyers, engineers and architects, if there are no retail sales;

(c) Individual and family counseling offices (not including group counseling) such as psychiatrists, psychologists and sociologists, and other uses determined by the planning director to be of the same general character;

(d) Prescription pharmacies, in connection with medical-dental offices.

(Ord. 170 § 2 (part), 1976)

6-1004 Uses requiring a permit.

The following uses are permitted in the APO district on the issuance of a land use permit:

(a) Research institutes and laboratories devoted to experimental study such as testing and analyzing;

(b) Publicly-owned buildings and structures, except as provided in Section 6-516;

(c) Community buildings, clubs and activities of a quasi-public, social or fraternal character;

(d) Eleemosynary and philanthropic institutions, and convalescent hospitals;

(e) Churches;

(f) Multiple-family buildings;

(g) Any permitted uses on a site smaller than two hectares (4.94 acres) in size;

(h) Uses which the planning commission has found, after notice and hearing, to be comparable to the uses set out in this section. The city council expressly finds that the following uses are not comparable to any of the uses set forth in this section and, therefore, are not permissible under any circumstances: drug stores, manufacturing, restaurants and cafes, and retail sales not associated with a permitted use.

(Ord. 170 § 2 (part), 1976)

6-1005 Lot area.

No new lots may be created in the APO district smaller than two hectares (4.94 acres) in size.

(Ord. 170 § 2 (part), 1976)

6-1006 Height.

(a) No building or other structure in the APO district shall exceed the height limitations indicated in the height areas illustration shown in Figure 6-1006.

(b) When any portion of a building or structure lies across the boundary line of any of the height limitation areas described in subsection (a), the minimum height requirement of the most restrictive area shall be applicable.

(c) Building height shall be measured to the highest point of a building or structure from the lowest point where the lowest foundation wall intersects with the ground.

(Ord. 170 § 2 (part), 1976)

6-1007 Side yards.

No side yard in the APO district shall be less than 15 meters (49.21 feet) wide. (Ord. 170 § 2 (part), 1976)

6-1008 Rear yards.

There shall be a rear yard of at least eight meters (26.25 feet) for any structure in the APO district. (Ord. 170 § 2 (part), 1976)

6-1009 Setback.

There shall be a setback of at least eight meters (26.25 feet) for any structure in the APO district. (Ord. 170 § 2 (part), 1976)

6-1010 Separation of structures from public right-of-way.

Every one-story structure in the APO district shall be separated from the right-of-way of any public street by at least eight meters (26.25 feet), and every multiple-story structure shall be separated from the right-of-way of any public street by a distance of at least 15 meters (49.21 feet). No parking shall be allowed in the area separating a structure from a public right-of-way, and the area shall be landscaped. (Ord. 170 § 2 (part), 1976)

6-1011 Landscaping.

In addition to required landscaping in required areas separating structures from public right-of-way, 20 percent of a lot in the APO district shall be planted and maintained with growing plants. To qualify as landscaped space, an area must be a minimum of five meters (16.40 feet) in width. (Ord. 170 § 2 (part), 1976)

6-1012 Approval guidelines.

The design review commission and the planning commission, when reviewing development proposals for the APO district, shall apply discretionary development requirements according to the following guidelines:

(a) Lots in the APO district should be linked by comprehensive internal road networks to facilitate and encourage easy internal movement and discourage numerous access/egress points associated with the road systems surrounding the district.

(b) Buffer areas of terrain features and landscaping should be provided between buildings or other structures and road systems surrounding the district.

(c) Buildings, other structures and earthworks should be designed and sited to be visually harmonious, and should be compatible with terrain features in terms of mass, colors, materials and general appearance.

(Ord. 324 § 2(b) (part), 1984; Ord. 170 § 2 (part), 1976)

6-1013 Off-street parking and loading.

Off-street parking and loading facilities in the APO district shall be provided in accordance with Chapter 6-6 of this title. (Ord. 170 § 2 (part), 1976)

6-1014 Design review.

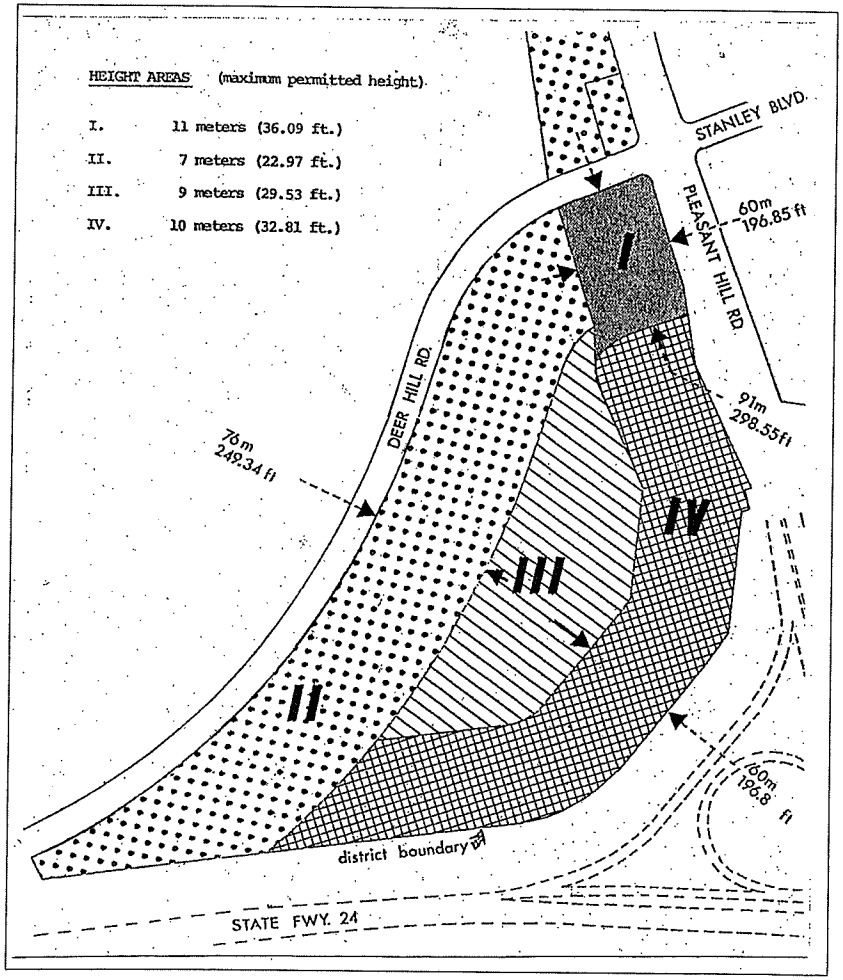
All new construction and all remodeling of a structure when the completed new work will be visible from public property, or when the nature of the use will be changed, shall be subject to the design review requirements and procedures set forth in Part 1 of this title. (Ord. 324 § 2(d) (part), 1984: Ord. 170 § 2 (part), 1976)

6-1015 Modifiable sections.

Land use permits for the special uses enumerated in Section 6-1004 and variance permits to modify the provisions of Sections 6-1005 through 6-1013, inclusive, may be granted in accordance with the applicable provisions of Chapter 6-1 of this title. (Ord. 170 § 2 (part), 1976)

Figure 6-1006

Administrative/Professional Office District - Height



Planning Services Division
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549-1968
Tel. (925) 284-1976 • Fax (925) 284-1122
http://www.ci.lafayette.ca.us

R-20

Single-family Residential District-20

6-781	General.
6-782	Uses permitted.
6-783	Uses requiring a permit.
6-784	Lot area.
6-785	Lot width.
6-786	Lot depth.
6-787	Height.
6-788	Side yards.
6-789	Setback.
6-790	Rear yard.
6-791	Parking spaces.
6-792	Parking restrictions.
6-793	Modifiable sections.

NOTE: The City has other regulations, which may affect individual properties, including, but not limited to hillside development, structures over 17-ft. in height, development in excess of 6,000 sq. ft., tree protection, grading, and public art. Please review the Project Checklist available on the City of Lafayette web site at www.lovelafayette.org for an overview of regulations that might apply. You may consult Planning Services Division staff to ascertain which rules and regulations apply to any given project.

Single-family Residential District-20

6-781 General.

All land in the single-family residential district-20 (map symbol R-20) shall be used in accordance with the provisions of this article. (Ord. 63 § 7 (part), 1972)

6-782 Uses permitted.

The following uses are permitted in the R-20 district:

(a) A detached single-family dwelling on each lot and the accessory structures and uses normally auxiliary to it;

(b) Foster home or family care home operated by a public agency, or by a private agency, which has obtained state or local approval (license) for the proposed operation, where not more than six minors reside on the premises with not more than two supervisory persons;

(c) Residential care home for the aged, operated by a public agency or by a private agency which has obtained state or local approval (license) for the proposed operation, where not more than six aged persons reside on the premises with not more than two supervisory persons;

(d) The keeping of livestock, as provided in Sections 6-523 and 6-524;

(e) A home occupation.

(Ord. 115 § 3 (part), 1973; Ord. 63 § 7 (part), 1972)

6-783 Uses requiring a permit.

In the R-20 district the following uses are permitted on the issuance of a land use permit:

(a) Residential businesses;

(b) Churches, religious institutions, and parochial and private schools, including nursery schools;

(c) A second unit which complies with Chapter 6-5, Article 3 of this title;

(d) Reserved.

(e) Publicly owned buildings and structures, except as provided in Section 6-516;

(f) Publicly owned parks and playgrounds;

(g) Community buildings, clubs and activities of a quasi-public, social or fraternal character; and private recreational facilities, such as golf clubs, swimming pools and tennis clubs, whether or not operated for profit;

(h) Crop and tree farming and horticulture;

(i) Small farming, including the raising of poultry or rabbits or other grain-fed rodents, exclusively for home consumption;

(j) Uses which the planning commission has found, after notice and hearing, to be comparable to the uses enumerated in this section;

(k) Multiple pet activity, but only on parcels of land 20,000 square feet in size or larger.

(Ord. 333 § 1 (part), 1985; Ord. 300 §§ 3 (part), 4 (part), 1984; Ord. 266 § 8, 1982; Ord. 120 §§ 1 (part), 2 (part), 1973; Ord. 115 § 5 (part), 1973; Ord. 63 § 7 (part), 1972)

6-784 Lot area.

No single-family dwelling or other structure permitted in the R-20 district shall be erected or placed on a lot less than 20,000 square feet in area. (Ord. 63 § 7 (part), 1972)

6-785 Lot width.

No single-family dwelling or other structure permitted in the R-20 district shall be erected or placed on a lot less than 120 feet in average width. (Ord. 63 § 7 (part), 1972)

6-786 Lot depth.

No single-family dwelling or other structure permitted in the R-20 district shall be erected or placed on a lot less than 120 feet deep. (Ord. 63 § 7 (part), 1972)

6-787 Height.

(a) No single-family dwelling or other structure permitted in this district may exceed 35 feet in height or two and one-half stories.

(b) Structures higher than 30 feet in height shall be subject to approval of the design review commission and the findings contained in Section 6-1905.

(Ord. 386 § 5 (part), 1991)

6-788 Side yards.

There shall be an aggregate side yard width of at least 35 feet for any structure in the R-20 district. No side yard shall be less than 15 feet wide. These minima may be reduced to three feet for an accessory building or structure if it is set back at least 65 feet from the front property line. (Ord. 63 § 7 (part), 1972)

6-789 Setback.

There shall be a setback (front yard) of at least 25 feet for any structure in the R-20 district; on corner lots the principal frontage of the lot shall have a setback of at least 25 feet and the other setback shall be at least 20 feet. (Ord. 63 § 7 (part), 1972)

6-790 Rear yard.

There shall be a rear yard for any principal structure in the R-20 district of at least 15 feet. There shall be a rear yard for accessory structures of at least three feet. (Ord. 63 § 7 (part), 1972)

6-791 Parking spaces.

Every dwelling unit permitted in the R-20 district shall have on the same lot or parcel enough automobile storage space for at least two automobiles; each parking space shall have minimum dimensions of at least ten feet by 20 feet, either covered or open, and shall not be located within the setback or sideyard area of a principal structure. (Ord. 63 § 7 (part), 1972)

6-792 Parking restrictions.

The provisions of Section 8125 of the Contra Costa County Ordinance Code apply to the R-20 district. (Ord. 63 § 7 (part), 1972)

6-793 Modifiable sections.

Land use permits for the special uses enumerated in Section 6-783, and variance permits to modify the provisions of Sections 6-784 to 6-792, inclusive, may be granted in accordance with the applicable provisions of Chapter 6-1 of this title. (Ord. 63 § 7 (part), 1972)

LAFAYETTE
SETTLED 1848 — INCORPORATED 1968

Planning Services Division
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549-1968
Tel. (925) 284-1976 • Fax (925) 284-1122
http://www.ci.lafayette.ca.us

LR

Low-Density Residential District

6-7161 General.
6-7162 Purposes.
6-7163 Uses permitted.
6-7164 Uses requiring a permit.
6-7165 Lot area.
6-7166 Lot width.
6-7167 Lot depth.
6-7168 Height.
6-7169 Yards.
6-7170 Parking space.
6-7171 Variances.
6-7172 Design review criteria and approval.

NOTE: The City has other regulations, which may affect individual properties, including, but not limited to hillside development, structures over 17-ft. in height, development in excess of 6,000 sq. ft., tree protection, grading, and public art. Please review the Project Checklist available on the City of Lafayette web site at www.lovelafayette.org for an overview of regulations that might apply. You may consult Planning Services Division staff to ascertain which rules and regulations apply to any given project.

Low-Density Residential District

6-7161 General.

All land in the low-density residential district (map symbol L-R) shall be used in accordance with this article. (Ord. 410 § 1 (part), 1993)

6-7162 Purposes.

The purposes of the low-density residential (L-R) district include the following:

(a) Provide for areas of very low-density residential uses consistent with the general plan and with the city's primary objective of preservation and enhancement of its semirural residential character;

(b) Promote the health, safety and welfare of the community by protecting the land in the L-R district from uses which would disturb the natural environment and increase geologic, pedologic, seismic, hydrologic or other inherent hazards;

(c) Preserve and maintain the scenic, recreational, biotic, historic and other resources of land in the L-R district.

(Ord. 410 § 1 (part), 1993)

6-7163 Uses permitted.

In the L-R district, the following uses are permitted:

(a) A detached single-family dwelling on each lot and the accessory structures and uses normally auxiliary to it;

(b) The keeping of livestock, consistent with recognized principles of range management and in compliance with Sections 6-523 and 6-524;

(c) Small farming, including the raising of poultry or rabbits or other grain-fed rodents exclusively for home consumption in compliance with Section 6-524;

(d) A home occupation.

(Ord. 410 § 1 (part), 1993)

6-7164 Uses requiring a permit.

The planning commission, after a public hearing and upon a showing by an applicant that such use is consistent with the uses in the general area, may grant a land use permit for the following uses:

(a) A residential business;

(b) Publicly owned buildings and structures, except as provided in Section 6-516;

(c) Crop and tree farming, horticulture, viticulture, grazing and other similar agricultural uses;

(d) Community building, club or activities of a quasi-public, social or fraternal character, private recreational facility, such as a golf club, swimming pool and tennis club, whether or not operated for profit;

(e) Horse riding academy or horse riding school meeting the requirements of Sections 6-523 and 6-524;

(f) Multiple pet activity on a parcel of land 20,000 square feet in size or larger;

(g) Kennel activity;

(h) A second unit which complies with Sections 6-560—6-566;

(i) Uses which the planning commission has found, after notice and hearing, to be comparable to the uses enumerated in this section.

(Ord. 410 § 1 (part), 1993)

6-7165 Lot area.

The minimum lot area in the L-R district is five acres subject to the following qualification: If the parcel has an average slope of 15 percent or more and is created as a result of a land division of an L-R parcel after July 28, 1993, the minimum lot area is five acres or that required by Section 6-3104 whichever is greater. (Ord. 410 § 1 (part), 1993)

6-7166 Lot width.

No lot may be created in the L-R district that is less than 200 feet in average width. (Ord. 410 § 1 (part), 1993)

6-7167 Lot depth.

No lot may be created in the L-R district that is less than 200 feet deep. (Ord. 410 § 1 (part), 1993)

6-7168 Height.

No single-family dwelling or other structure permitted in the L-R district shall exceed 30 feet in height or two and one-half stories. (Ord. 410 § 1 (part), 1993)

6-7169 Yards.

All buildings erected in the L-R district, including accessory buildings, shall be a minimum of 50 feet from property lines or easement lines. (Ord. 410 § 1 (part), 1993)

6-7170 Parking space.

(a) Residential Parking Space. Every dwelling unit permitted in the L-R district shall have, on the same lot or parcel, space for at least four automobiles. Each parking space shall be paved and shall have dimensions of at least ten feet by 20 feet, and shall not be located within 50 feet of any property line.

(b) Nonresidential Parking Space. Parking for a recreation building, club building or other nonresidential use in the L-R district is governed by Sections 6-601—6-661. (Ord. 410 § 1 (part), 1993)

6-7171 Variances.

The planning commission may grant a variance to alter the requirements of Sections 6-7165—6-7170 in accordance with the applicable provisions of Sections 6-201—6-238. (Ord. 410 § 1 (part), 1993)

6-7172 Design review criteria and approval.

(a) The design review approval requirement applies to all L-R properties. However, the primary purpose of design review is to regulate development on hillside or ridgeline properties which (1) are susceptible to environmental damage due to geologic, pedologic, seismic, hydrologic disturbances caused by nature and man or (2) are viewable from lower elevations. The regulation shall be administered in a manner to meet the physical and visual characteristics of each site.

(b) On each hillside or ridgeline lot particular attention shall be given in the design review process to prevent or reduce the adverse effects of grading and drainage.

(c) Each dwelling unit shall be substantially concealed by vegetation or terrain or both when viewed from lower elevations from publicly owned property (including freeways, other public roadways, public open space and parks). It is the intent of this requirement to protect views of the open and highly visible portions of the scenic hillsides and ridgelines so that they will appear essentially undeveloped as viewed from below the dwelling. On file in the office of the planning director is a map entitled "viewing evaluation," dated March 1, 1993 and prepared by the planning department which is intended as a guide to establish locations from which views will be determined.

(d) No building, structure or other facility, including a road, driveway, retaining wall over three feet in height or graded slope over six feet in height may be constructed, established or altered in such a manner as to affect the existing physical condition or exterior appearance, unless the design review commission first approves plans in accordance with the procedure in Sections 6-270—6-281.

(e) The planning director shall determine, through review of information provided by the applicant and field inspection, whether a proposal subject to design review shall be reviewed by the design review commission or by the planning director. The planning director may retain approval authority if:

(1) The proposed structure cannot be seen from areas indicated in the viewing evaluation map that are lower in elevations than the proposal; and

(2) The improvement proposed does not require a grading permit, nor the removal of trees over four inches in diameter; and

(3) The proposal is one story in height.

(Ord. 410 § 1 (part), 1993)

Background Chronology of Eastern Deer Hill Road

April 19, 2001 — Based on a recommendation from the General Plan Advisory Committee, the Planning Commission voted 4-2 to recommend to the City Council that the General Plan designation for the Eastern Deer Hill Road area be changed to Rural Residential.

January 2002 — As part of the discussion about the revised General Plan in January 2002, the City Council approved staff's recommendation that the eastern Deer Hill area be the subject of further planning before a decision on land use designations was made.

February 2002 — The Council confirmed that further planning should be done for this area by including the adoption of an Eastern Deer Hill Road Specific Plan in its FY2002/2003 goals.

July 2002 — Planning staff sent out requests for proposals to consultants for the preparation of the specific area plan.

September 2002 — Planning staff recommended to the Council that WRT be selected for preparation of the specific plan. WRT's cost to prepare the specific plan was $146,213. The Council subsequently asked staff to look at less expensive options which were presented to the Council later that month.

October 2002 — After reviewing seven options ranging from modifying the consultant's scope of work for the specific plan, hiring a contract planner, to removing the specific plan as a Council goal, the Council decided to defer consideration of the specific plan to their goal setting session for 2003/2004.

October 28, 2002 — City Council adopts the revised General Plan including the following:

- Goal LU-13: Ensure that the Eastern Deer Hill Road area near the section of Pleasant Hill road is developed, where development is appropriate, in a manner consistent with Lafayette's community identity.
- Policy LU-13.1: Preserve and enhance the semi-rural single-family residential character north of Deer Hill Road where not adjacent to Pleasant Hill Road.
- Policy LU-13.2: Consider options for development south of Deer Hill Road and north of Deer Hill Road where adjacent to Pleasant Hill Road.
- Program LU-13.2.2: Prepare through community planning process as Eastern Deer Hill Road Specific Plan.

February 2003 — At its goal setting session for 2003/2004, the Council decided not to include preparation of the Deer Hill Road Specific Plan as a goal due to budget constraints and other significant projects taking staff's time. However, staff was asked to bring back an agenda item to discuss whether the land use designation within the planning area should be changed.

At the City Council meeting of February 24, 2003, staff offered three options for the Council to consider; 1) Do nothing now and reconsider preparation of a specific plan next year, 2) Initiate a General Plan amendment to change the current APO designations to LR and revise the General Plan goals, policies, and program to support this change in density, and 3) Direct staff to prepare a specific plan. The City Council voted to pursue option 2 and have staff return with a specific proposal for a General Plan Amendment (see City Council minutes of February 24, 2003). This action was added to the Planning Division work plan for 2003/2004.

August 2003 — Staff began preparation of the General Plan Amendment but asked for clarification from the City Council on which specific properties to include. The minutes of the City Council meeting of August 11, 2003 state the following:

City Manager Falk said staff would prefer a motion, and said the question before the Council was how many and which lots would the Council like studied, not what zoning the Council would like them to be.

Mayor Federighi said it is clear they are looking at all seven parcels, but the Council disagrees on what the ultimate zoning designation should be. Ms. Merideth suggested directing staff to look at all seven parcels. Staff can bring back options to be heard by the Planning Commission who can then make a recommendation to the Council. A first scenario could be every parcel is LR. Another scenario could be a suggestion for Parcel 1 depending upon its size, something for Parcel 4 where the line is, how many potential single-family units should be on the property, etc.

Councilmember Tatzin confirmed it would be a Council-initiated General Plan amendment. Ms. Merideth said the Council was initiating a General Plan amendment change tonight, sending it onto the Planning Commission, and that staff would do an analysis. However, she clarified that staff has not concluded on how it would be presented, either with options or with a proposal with alternatives, or some other way.

She [Ms. Merideth] said staff would like a General Plan amendment for all seven properties, with the Planning Commission to make a recommendation, and with a view toward changing the APO parcels to residentially zoned parcels.

ACTION: It was M/S/C (Tatzin/Horn) to direct staff to initiate a General Plan amendment for the seven parcels as outlined in the Eastern Deer Hill Road area and that parcels with APO zoning be changed to residential zoning. Vote: 4-0-1 (Samson absent).

November 18, 2004 Planning Commission conducts first public hearing on GP03-04/RZ02-04 as described below.

GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

During staff's research into the evolution of the City's desire to consider General Plan and zoning changes for the Eastern Deer Hill area, it was noted that two other options for the seven properties in this area were discussed during public hearings for the 2002 General Plan update. The staff report for this meeting included two possible options in addition to the project description. (See Exhibit 1)

January 6, 2005 Planning Commission conducts a public hearing. At the meeting, a majority of the Commissioners expressed concern about moving forward with GP03-04/RZ02-04 without additional information on the physical characteristics of the properties and an assessment of their development potential. The Commission directed staff to prepare a preliminary scope of work and budget for a consultant to prepare an opportunities and constraints analysis (OCA) for the seven Deer Hill Road properties.

February 3, 2005 Planning Commission holds a public hearing where staff presents a scope of work and budget for a consultant to prepare an OCA. The Commission votes to forward the Commission's recommendation to the City Council for preparation of an OCA prior to any further action on GP03-04/RZ02-04.

March 15, 2005 City Council conducts a public hearing to consider preparation of an OCA. The City Council votes to provide $40,000 from the General Fund for the preparation of the OCA.

September 7, 2006 Planning Commission conducts a public hearing where it reviews the OCA prepared by MHA Consulting and considers staff's request to decide which specific properties within the Easter Deer Hill Area should be included in the General Plan and rezoning applications and what the designations should be. Further discussion on GP03-04/RZ02-04 is continued to allow staff to respond to Planning Commission requests for more information related to a scope of work and estimated cost for a consulting civil engineer to calculate the average slope of specific properties in the study area and a scope of work for conceptual design studies for parcels 27 and 28 (1175 Pleasant Hill Road and 3233 Deer Hill Road, respectively), including bulk and mass studies and circulation and traffic constraints.

October 19, 2006 & November 16, 2006 Staff provides scopes of work for average slope calculations and conceptual development studies to the Planning Commission at a public hearing. On November 16, the Commission directs staff to proceed with requests for proposals for the two studies. (The $30,000 needed to prepare the studies is included in the Planning Services Division consulting services budget.)

November 15, 2007 As directed by the Planning and Building Services Manager, staff provides the Planning Commission with a copy of the proposal by Design, Community & Environment to prepare conceptual development studies for parcels 27 and 28. The Planning Commission votes to rescind its prior direction to staff for preparation of conceptual development studies.

November 21, 2007 Martin Lysons of Gagen McCoy files a letter on behalf of Anna Maria Dettmer appealing the Planning Commission's November 15 decision.

January 14, 2008 City Council conducts a public hearing on the appeal by Anna Maria Dettmer and votes to deny the appeal and uphold the Planning Commission's decision to rescind the preparation of conceptual development studies.

EXHIBIT 1
PROJECT DESCRIPTION AND TWO OPTIONS

GP03-04, RZ02-04 CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties located on Deer Hill and Pleasant Hill roads as follows:

Properties	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
APN 232-140-014	State of California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-150-027	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-150-028	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Low Density Single Family	APO	R-20

The Planning Commission and City Council may also consider the following two options:

Option1

Properties	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
APN 232-140-014	State of California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-150-027	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-150-028	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10

Option 2

Properties	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
APN 232-140-014	State of California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-150-027	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-150-028	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	L-R-10
APN 232-140-004	Naglicki	Low Density Single Family Residential	Rural Residential Single Family	R-20	L-R-10
APN 232-140-010	Dettmer	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential Single Family	Split R-20 & LR-10	L-R-10
APN 232-140-016	Dettmer	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential Single Family	Split R-20 & LR-10	L-R-10
APN 232-150-021	Holding	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential Single Family	Split R-20 & LR-10	L-R-10

SCHELL AND MARTIN, INC.
Land Surveying & Civil Engineering
3377 Mount Diablo Boulevard
Lafayette, California 94549
(925) 283-8111 Fax:(925) 283-2866

RECEIVED
MAR 0 9 2007
CITY OF LAFAYETTE
PLANNING DEPT.

DATE: March 7 2007
JOB NO. 409-07 (City of Lafayette)

City Planning
City of Lafayette
3675 Mt. Diablo Boulevard, #210
Lafayette, California 94549

Telephone: (925) 284-1968
Fax: (925) 284-1122

Attention of: Christine Sinnette, Senior Planner

Subject: Slope Evaluation for the Eastern Deer Hill Road Study Area, located between Elizabeth Street and Pleasant Hill Road, in Lafayette, Contra Costa County, California. (A.P.N. 232-140-004, 010, 014 & 016 and A.P.N. 232-150-021, 027, & 028)

Dear Ms. Sinnette:

Pursuant to your request of 1-19-2007, we have conducted an analysis of the slopes for the seven parcels along Deer Hill Road, between Elizabeth Street and Pleasant Hill Road and we enclose the following items for your review and use:

- One set of slope density calculations.

In order to conduct this study, we have utilized the HJW Air Photo Topography Map, dated April 02, 2004, provided to us by the city. This topographic map is drawn at an approximate 1"=100' scale and has a five contour interval. The contours shown on the map cover the entire area of our study, however, some of the contours are interpolated through dense tree cover & may not be as accurate.

No property lines are shown upon the original topographic map. Record property lines were placed upon this map by Schell & Martin, Inc. and represent a "best fit" of all available information. Property lines were compiled for this study by evaluating available public records (tax maps, deeds, and right-of-way information). This information was then placed upon the topography map using physical lines of occupation shown on the map, such as fences and roadways.

Areas have been determined from tax map information, planimeter measurements, and calculations using record data. No field work was performed by this firm in preparing this study.

Based upon our review of the topographic map, we find that the subject area varies in elevation from approximately 330 feet to approximately 720 feet above sea level and we report the following results of our slope analysis as follows:

Scope of Work

Calculate the average slope of each of the seven parcels.

(A.P.N. 232-140-010): Based upon a ten-foot contour interval the average slope is 42.4 %.
(A.P.N. 232-140-016): Based upon a ten-foot contour interval the average slope is 37.3 %.
(A.P.N. 232-140-004): Based upon a ten-foot contour interval the average slope is 21.0 %.
(A.P.N. 232-140-014): Based upon a ten-foot contour interval the average slope is 30.9 %.

(A.P.N. 232-150-021): Based upon a ten-foot contour interval the average slope is 34.0 %.
(A.P.N. 232-150-028): Based upon a ten-foot contour interval the average slope is 26.7 %.
(A.P.N. 232-150-027): Based upon a ten-foot contour interval the average slope is 24.3 %.

Calculate the average slope of the R-20 zoned area on parcels 232-140-010, 232-140-016, and 232-150-021:

A.P.N. 232-140-010): Based upon a ten foot contour interval the average slope is 18.1 %.
A.P.N. 232-140-016): Based upon a ten foot contour interval the average slope is 35.8 %.
A.P.N. 232-150-021): Based upon a ten foot contour interval the average slope is 27.0 %.

Calculate Area of land with slope of 15 per cent or less in R-20 zoned areas in 232-140-010, & 016 and on parcels 232-150-021, 027 & 028. Hjw map shows these areas with hatched pattern):

(A.P.N. 232-140-010): Area=53,900 Sq. Ft.±., based upon planimeter measurement.
(A.P.N. 232-140-016): Area=85,900 Sq. Ft.±., based upon planimeter measurement.

(A.P.N. 232-150-021): Area= 73,700 Sq. Ft.±., based upon planimeter measurement.
(A.P.N. 232-150-027): Area=356,500 Sq. Ft.±., based upon planimeter measurement.
(A.P.N. 232-150-028): Area= 31,100 Sq. Ft.±., based upon planimeter measurement.

Calculate Area of land with slope of 30 per cent or less in R-20 zoned areas in 232-140-010, & 016 and on parcels 232-150-021, 027 & 028):

(A.P.N. 232-140-010): Area=169,100 Sq. Ft.±., based upon planimeter measurement.
(A.P.N. 232-140-016): Area=190,600 Sq. Ft.±., based upon planimeter measurement.

(A.P.N. 232-150-021): Area=125,800 Sq. Ft.±., based upon planimeter measurement.
(A.P.N. 232-150-027): Area=608,900 Sq. Ft.±., based upon planimeter measurement.
(A.P.N. 232-150-028): Area= 35,600 Sq. Ft.±., based upon planimeter measurement.

Calculate the average slope on 232-150-027 for the area northeast of the drainage channel:

(A.P.N. 232-150-027): Based upon a five-foot contour interval the average slope is 12.4 %.

Calculate the average slope on 232-150-027 for the area southwest of the drainage channel:

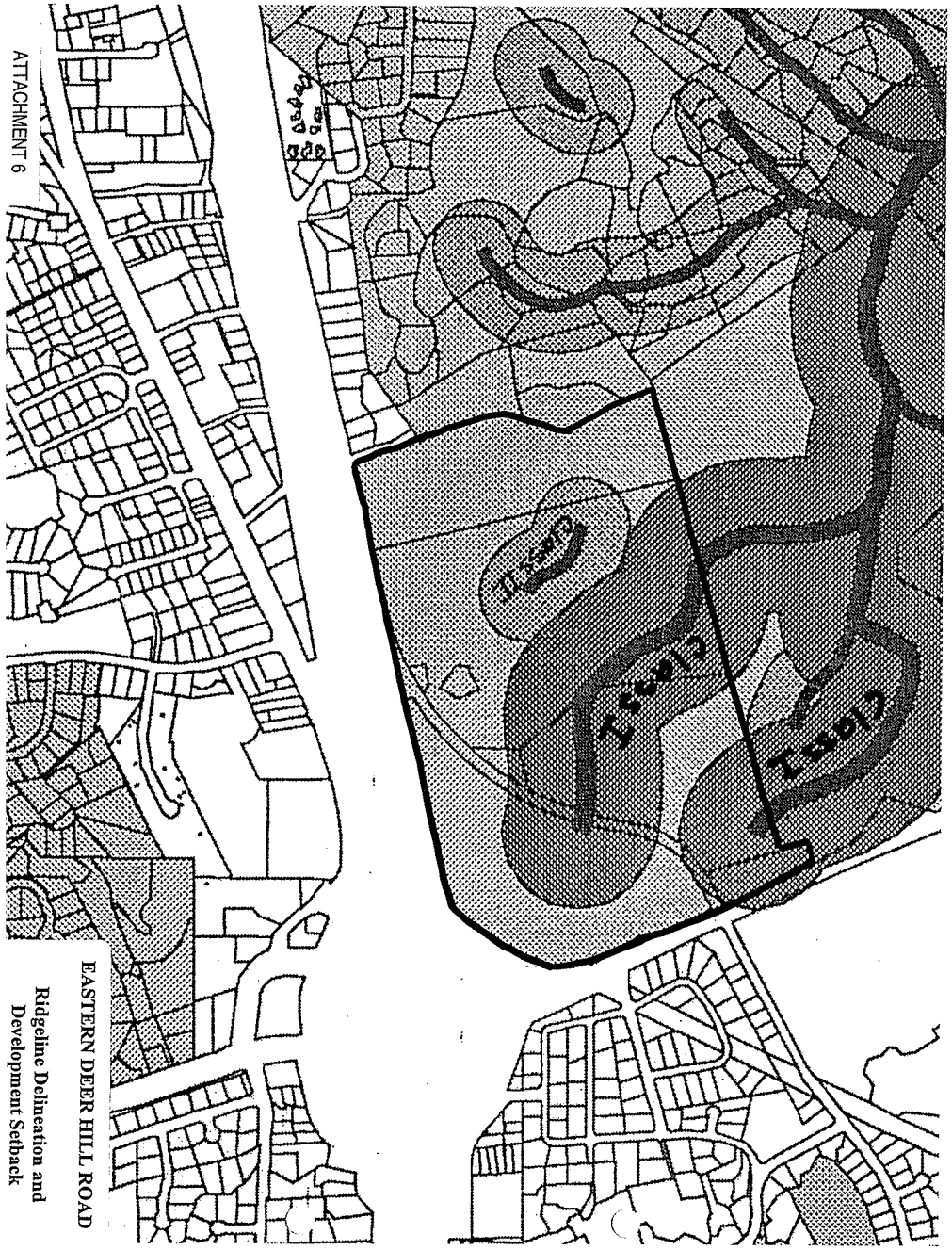
(A.P.N. 232-150-027): Based upon a ten-foot contour interval the average slope is 20.2 %

For your review and approval. If you have any questions, or need additional assistance, please do not hesitate to contact us.

SCHELL & MARTIN, INC.

Gordon Schell
For Howard G. Martin

ATTACHMENT 6



Sinnette, Christine

From: Guy Atwood [guyatw@promeetium.com]
Sent: Friday, January 11, 2008 3:24 PM
To: Srivatsa, Niroop
Cc: Sinnette, Christine
Subject: DeerHill/Pleasant Hill Road properties

Niroop,

I wanted to thank you and Christine especially for taking the time to explain the current status of the seven parcels along DeerHill and Pleasant Hill Roads. However, since staff and/or the City have not made a specific recommendation as to the zoning or rezoning of these parcels, I do not understand the need for any appeal. If the applicant wanted to pay for a more complete study, then I am certain the City would consider that option.

I continue to support an LR zoning on five of the parcels as recommended by the GPAC, but support more flexible zoning on the far westerly portion (perhaps R-20, or some multiple residential use), and flexible zoning on the "sliver" at the southwest corner of Deerhill and Pleasant Hill Roads. The City should consider a purchase of this property for a local park, if they cannot purchase the Holding property; or purchase with transportation funds for a park and ride, or encourage BART or other agency to do so.

Again, thanks for all of your help and, if possible, I would like to be placed on the noticing list for any future actions or meetings on these parcels.

Guy Atwood

ATTACHMENT 7

Jeff Hutson felt it is an added benefit to all the neighborhoods and the children to have sidewalks. From canvassing the neighborhood for the past eleven months, everyone is in strong support of moving it forward. He would urge the Commission to vote yes on the matter.

Gene Holit said it has been quite a process coming up with safe ways to walk and to slow down the traffic. Pedestrian walking between cars is really dangerous. The problem is compounded when there are big events happening at the schools and at the pool. A sidewalk is really needed and should be included in the plan.

Chair Mitchell closed the public hearing and asked Ms. Greenblat if the Fire Department had a chance to review the proposal. Ms. Greenblat reported staff had some initial discussions with the Fire District and will continue to work with them as they move into the design phase.

Commissioner Ateljevich moved and Commissioner Humann seconded to recommend the addendum to the Master Walkways Plan Project, consistent with the adopted General Plan.

AYES: Ateljevich, Chastain, Humann, and Mitchell
NOES: None
ABSENT: Curtin-Tinley, Holt, and Lovitt
ABSTAIN: None

B. **GP03-04 CITY OF LAFAYETTE (APPLICANT)**: Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.
RZ02-04 CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.
Project Planner: Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org
Recommendation: Direct staff to proceed with a General Plan amendment to reclassify APN 232-140-014 and APN 232-150-028 to Low Density Single Family Residential and APN 232-150-027 to Rural Residential Single Family and change the zoning for APN 232-140-014 and APN 232-150-028 to R-20 and APN 232-150-027 to L-R-10. (Estimated time: 60 minutes)

Project Planner Christine Sinnette said the purpose of the hearing is to review the average slope calculations prepared at the request of the Planning Commission in order to finalize the project description for the potential changes in General Plan and zoning designations for properties in the Eastern Deer Hill Road area. Application of the slope density table pursuant to the Hillside Regulations has a profound effect on the potential residential density of several of the properties, particularly Parcels 10, 14, 16, and 21.

As directed by the City Council in August 2003, staff is to initiate a General Plan amendment for the seven parcels. Parcels with APO zoning are to be changed to residential zoning. Based on that direction and the analysis in the report, staff recommends the Planning Commission consider changing the zoning of Parcel 14 from APO to R-20, Parcel 27 from APO to LR-10, Parcel 28 from APO to R-20, and to leave the other four parcels with their current zoning.

Staff has presented potential amendments centering on R-20 and the LR-10 zoning designations since the amendments were initiated in 2004. Consideration of these zoning designations came

from a number of sources, including the City Council, the Planning Commission, the General Plan Advisory Committee, and the public at-large. After the report was written, staff considered the discussions that had occurred, relating to whether or not a mixed use zone, particularly for the parcels fronting Pleasant Hill Road might be appropriate. Also, only the LR-10 designation was discussed, rather than a possibility of an LR-5.

The Planning Commission may want to consider the option of looking at an MRO mixed use for the two properties on Pleasant Hill Road and to possibly remove the split zoning on the other parcels. Parcel 10 has a total lot area of 17 acres and has a split zoning of R-20 and LR-10. If the 17 acres is changed to LR-5, the maximum density with the underlying zoning would be three dwelling units. The slope density calculations show there could be anywhere from four to ten units on the property. The question is whether the LR-5 is sufficient or whether split zoning should be considered.

Commissioner Ateljevich interjected they explored the property when they did the LR-5 analysis and came up with the LR-10 for all of the properties. Ms. Sinnette explained that the City Council directed staff to look at the properties zoned LR-10 to see if they qualified to be reduced to LR-5 after the General Plan amendments were in place. Staff was not charged with looking at whether LR-5 was applicable beyond the properties zoned LR-10. Staff is asking the Commission to look at each lot as a whole to determine if it would qualify for LR-5 because the split zoning is cumbersome.

Commissioner Ateljevich felt what they would need to know is the end result if they were going to get rid of split zoning. Ms. Sinnette said the maximum density would be three if the whole 17 acres were re-zoned to LR-5. As it stands, it could be anything between four and ten based on the slope density and the area that is R-20.

Chair Mitchell asked how staff arrived at that. He seemed to recall the level portion down below was the R-20 portion that goes up the hill quite a ways. Ms. Sinnette said she did a rough calculation of the overall density based on the un-subdivided property regardless of the zoning. The area zoned LR-10 is only allowed one dwelling unit for the whole area of Parcel 10. The R-20 section given its slope density would allow for ten dwelling units if they were to look at it separately.

Commissioner Ateljevich said the Hillside Regulations would apply if the overall slope of the property is 42%. Ms. Sinnette explained that is why they would get only one dwelling unit on the whole 17 acre property.

Commissioner Ateljevich said the Hillside Ordinance is going to control the density regardless of the zoning. Ms. Sinnette pointed out an applicant can apply for an exception to exclude steep areas, ravines, and creek beds. Without knowing exactly how that exclusion may play into that, the applicant could get more than one dwelling unit.

Commissioner Humann asked if a creek area was excluded when the slope density analysis was prepared to come up with the proposal. Ms. Sinnette said it was not.

Commissioner Ateljevich did not think the creek area is the steepest portion of the site since it is mostly in the R-20 area and would not affect the overall steepness of the slope even if it was excluded.

Commissioner Humann said in order for it to be really effective, it has to be a really steep area because the land area will be excluded. He is not sure if ten units are a possibility.

Ms. Sinnette said the slope density without any exceptions or exclusions would allow for five dwelling units on Parcel 16; LR-5 could allow up to seven dwelling units on the 38.13 acre site. Parcel 21 is a wash since the slope density calculation allows up to four units if it is LR-5. The LR-10 would allow for two dwelling units on Parcel 21. Parcel 27 would have a possible four dwelling units if they were looking at LR-5. Chair Mitchell opened the public hearing for comments.

Martin Lysons, Project Attorney, agreed with staff's recommendation for Parcels 10, 16, and 21 since the parcels are constrained by the Hillside Ordinance. The R-20 zoning for the portion of those parcels that front Deer Hill Road creates a consistent transition from the R-10 parcels that are to the west of them. The parcel sizes are denser as they go further west and the R-20 makes a seamless and logical transition on the way down. The MRO zoning for mixed use for the other two parcels should be seriously considered. They are very concerned the process is speeding rather recklessly toward a complete downzoning that not only devalues those two properties completely, but seeks to put single family homes in areas where they are not appropriate. The proposed rezoning will constitute a Fifth Amendment taking which will result in a taking of all reasonable economic use of the property. A home on the gas station parcel can never be sold and would logically devalue the property 100%. Discussions regarding split zoning and whether LR-5 or LR-10 is more appropriate should be discussed in the specific plan.

Mr. Lysons does not believe the City can meet the ABAG Regional Housing Needs Allocations for Lafayette for the provision of 361 affordable housing units. The Dettmer properties as mixed use will allow for multi-family housing. In order to reduce the zoning on a parcel, the City has to make findings that they can reach their affordable goals on the other remaining parcels. He does not see how that is possible based on the inventory in the housing element of the General Plan.

Government Code 65583.2 states the City must provide a description of the existing use of each property for non-vacant sites. The Code also requires a development potential analysis for all the non-vacant sites listed to include the extent to which the existing uses may constitute an impediment to additional residential development, the development trend, market conditions, regulatory, and other incentives or standards to encourage additional residential development on each site. To his knowledge, no such analysis has been provided. Government Code 65863 states you can't downzone parcels unless such an analysis has been done. In closing, they would like to work with the City to develop a rational use for the properties in question and come up with a reasonable mixed use for the two parcels that front Pleasant Hill Road.

Commissioner Ateljevich asked if staff had prepared an analysis with respect to conformance with the housing element. Ms. Srivatsa reported they are at the end of the housing element cycle and staff is embarking on a housing element update. The adopted housing element certified by the State initially showed that there is a capacity for 499 units in Downtown. The Cal Trans right-of-way site is no longer under consideration. In spite of that, staff believes there is a potential for over 400 units in the Downtown area. The City's consultants working on the Downtown Strategic Plan have thoroughly analyzed the redevelopment project area and have concluded there is enough capacity within the redevelopment project area to accommodate the ABAG numbers provided.

Mike Henn said there are insufficient grounds to substantially reduce potential development of the subject properties, particularly the APO properties. There are over 8 acres that are less than 15% slope. The level areas are generally cut, not filled. They are stable areas where the underlying basic rock formation is sandstone. The distance from the minor fault is such that actual developments could be mitigated for seismic issues. Sight distance issues with traffic will have to be addressed. Cal Trans' standards can mitigate traffic. The site due to its topography would allow for development and can be very easily screened from Pleasant Hill Road or from the freeway. The City has not identified any significant hazards or constraints that affect the APO-zoned properties. The site's residential development potential is needed by the City to meet the new and reasonable housing needs allocation assigned by ABAG in accordance with California law. There is not a legitimate number of vacant or under-developed sites that could meet that requirement. The City has gone too far already in making substantive decisions as to how each parcel is to be zoned, without indicating how the City would comply with CEQA. Everything from the mitigated negative declaration to the EIR has to be looked at before the Commission makes determinations on the properties in question.

Guy Atwood said much of the land in question had very low value when the State purchased it in order to extend the freeway. Anything that is done on the properties would be an extreme upgrade in terms of the property value. Property 28, the gas station property has severe constraints on it because of the size and shape, as well as issues with slides and traffic. He would hope the owners would consider his proposal for a park-and-ride. Property 27 was originally a hillside and has been illegally graded by the owners for a number of years. The City had to file many complaints and lawsuits to keep them from making it into a flat lot. He has concerns with traffic around that property. Regardless of extra turn lanes or signage, traffic will only get worse over time. The proposed light control at the intersection, if it ever goes into effect, will have cars backed up to Martinez with people getting on to Highway 24. The elevation issues of the property will make ingress/egress extremely difficult. As more housing gets built and more people move in that particular area, there will be virtual gridlock on Pleasant Hill Road and will only become a greater problem over time.

Chair Mitchell asked Mr. Atwood if he had any comments relating to the new proposal to consider LR-5 for some of the properties. Mr. Atwood believes the zoning recommended gives the property owner the greatest flexibility and opportunities to do something with the parcels. The rules and regulations under the R-20 zoning would allow the owner to do a number of things in addition to housing under a use permit even if it wasn't allowed under the zoning.

Commissioner Ateljevich asked staff to elaborate on the permit use. Ms. Sinnette said the R-20 zoning can allow for a church, school, park, social club, kennel, or a parking lot if certain findings can be made for use permit approval.

Mr. Atwood said that would seem to be the logical zoning to add for the greatest degree of flexibility. He would need more time to look at the authorized use of the other parcels.

Commissioner Ateljevich asked if the split zoning was functional in this instance. Ms. Sinnette said there can be clusters now since it is in the Hillside Overlay District. Where the R-20 might have had value in the past, it really doesn't any more because clustering would be required with no minimum lot size. The City's biggest concern is the APO, which allows for so many things that would not be considered appropriate in light of the General Plan. Because it is classified as an office use, it excludes those properties from the Chapter 6-20 hillside regulations. The Commission needs to look at getting the property in some residential zoning designation so they are then subject to Chapter 6-20. The Multiple Residential Office (MRO), which is classified as a residential zoning designation can allow for multi-family, and office uses for medical, architectural, or engineering services. Parcel 28 is totally encumbered by the Class 1 ridgeline. Anything that is going on there is going to have a great amount of scrutiny regardless. Staff is suggesting an MRO for the lower portion of Parcel 27. It would be a split zoning, with a physical demarcation to the zoning. A grading permit is on record for Parcel 27.

Commissioner Humann agreed with the staff report in leaving parcels 10, 15 and 21 alone. It will eliminate the acrimony between the City and the property owner. He is very concerned with the zoning for parcels 28 and 14. He cannot see residential use at all and could not support the residential designations for the parcels. He is not ready to make any sort of commitment to approve a rezoning for the remaining parcels. Given that they did not have a specific focus on the parcels in the process, he asked staff what the City's position is in working with the applicant to come up with something they can all be happy with. He does not want the property owner to feel they are steamrolling through the rezoning without their involvement.

Ms. Srivatsa reported the property owner's representative has been part of every meeting for the last three years. The Commission has taken everything they have said into consideration and the City has been open and receptive to the property owner's comments. The City or the owner can initiate negotiations to enter into a development agreement of some sort. It would ultimately be up to the City Council to decide what they want to do since it is a Council-initiated General Plan amendment. The Planning Commission has the right make recommendations, but it would be up to the City Council to make the final decision.

Commissioner Ateljevich did not mind the split zoning that exists on parcels 10 and 16. She does not support the R-20 zoning; it should be open space. She is troubled with lot 28; believes lot 27 should be LR-10; and does not think parcel 14 can be developed. Staff would need to review what can be done with the parcels right on Deer Hill.

Commissioner Chastain said the status quo for parcels 10, 16 and 21 is appealing to him; clarification is needed for some of the split zoning. He is in agreement with everything that has been said. The corner of Parcel 21 needs to be revised. His biggest problem is with Parcel 28, the Christmas tree parcel. He is interested in a study of what MRP would actually mean for that site. It is important to control the rest of parcel 27. He does not know about parcel 14 because they don't know what they are dealing with.

Chair Mitchell said it would be desirable to have a single zone, given that most of them are split zone lots. It would produce the same result as far as density. They could take a look at LR-10 zoning for all the parcels in order to make an intelligent decision. He agrees with Commissioner Ateljevich's comments about R-20 zoning, and would leave 10 and 16 alone. He would recommend LR-10 for parcel 21 because the section that is in R-20 is in the ridgeline. He does not find it useful to leave it there. He likes the idea of split zoning for parcel 27 along the creek line. He would like to look at a different usage for the Christmas tree lot. In general, he would like to see some residential zoning on parcel 28, the Christmas tree lot and the gas station lot. He has concerns with so much re-zoning to allow for commercial use in that area; he would like to see some residential zoning. He would want staff to prepare some analysis for the property, to supply more detail with regards to LR-5. They would be able to see utilization of different development as it applies to the provisions.

Commissioner Ateljevich suggested they focus their attention to parcels 27 and 28. Commissioner Chastain would like to see more analysis for LR-5 and clarification on parcel 28.

Chair Mitchell agreed it would give them a handle on what the actual requirements will be in that area. He would like to know if the LR-5 introduced tonight would permit clustering the acres.

Ms. Sinnette said in looking at the MRP, it is limitedto one-story as far as design ramifications. She does not know if there would have to be any additional studies done. Other than just an analysis of potential new uses, there is a floor area ratio built in the MRP. Staff can give those perimeters related potentially to design, bulk, or mass.

Commissioner Ateljevich felt traffic impacts would be important.

Chair Mitchell asked if the traffic analysis would be more appropriate when an application came forward. Ms. Sinnette said the General Plan EIR looked at the ARO properties, which given the zoning designation, is the maximum allowed. The General Plan has already analyzed the maximum traffic generation of the properties. Anything less than an APO has to be better. A traffic analysis at this point would not give us anything new as the worst case scenario has already been analyzed for the property.

Commissioner Ateljevich moved and Commissioner Humann seconded to continue the item to the March 20, 2008 meeting, to allow staff time to prepare an LR-5 analysis and provide more information for the gas station and Christmas tree lot sites.

AYES: **Ateljevich, Chastain, Humann, and Mitchell**
NOES: **None**
ABSENT: **Curtin-Tinley, Holt, and Lovitt**
ABSTAIN: **None**

8. OTHER BUSINESS

None

GagenMcCoy

William E. Gagen, Jr.
Gregory L. McCoy
Patrick J. McMahon
Charles A. Koss
Michael J. Markowitz
Richard C. Raines
Barbara Duval Jewell
Robert M. Fanucci
Allan C. Moore
Stephen T. Buehl
Amanda Bevins
Martin Lysons
Katherine S. Zelazny
Lauren E. Dodge
Anna Claveria Brannan
Sarah S. Nix
Ross Pytlik
Brian P. Mulry

Of Counsel
Linn K. Coombs

The Law Offices of
Gagen, McCoy, McMahon, Koss
Markowitz & Raines
A Professional Corporation

Danville Office
279 Front Street
P.O. Box 218
Danville, California 94526-0218
Telephone: (925) 837-0585
Fax: (925) 838-5985

Napa Valley Office
The Offices At Southbridge
1030 Main Street, Suite 212
St. Helena, California 94574
Telephone: (707) 963-0909
Fax: (707) 963-5527

Please Reply To:
Danville

February 15, 2008

By Email: planningcommission@lovelafayette.org

Mark Mitchell, Chair
Planning Commission
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Re: GP03-04, RZ02-04, Dettmer Properties, Deer Hill Road

Dear Chair Mitchell and Planning Commissioners:

Our law offices continue to represent Ms. Anna Maria Dettmer with regard to her properties in the Eastern Deer Hill Road area in Lafayette (APN 232-150-027; APN 232-150-028; APN 232-140-010; and APN 232-140-016, hereinafter, the "Dettmer Properties"). As you know, the record on this proposal is quite extensive. We submitted a letter to the Commission on November 17, 2004 and have appeared at Commission hearings on this matter since that date. Rather than repeat our concerns in detail here, I ask the Commission to review our November 17, 2004 letter (attached for your reference and referred to hereinafter as "2004 Letter") and summarize our position below.

The proposed rezoning will constitute a taking under the United States and California Constitutions. While we are not opposed to some form of rezoning *per se*, we are alarmed at the *magnitude* of the reduction in development potential proposed for the Dettmer Properties and the severity of the restriction of options for development. As set forth in detail in the 2004 Letter, the proposed rezoning would result in a diminution of development potential of over 90%. When the parcels are examined individually, the magnitude of the diminution in value increases. For example, restricting the 1.91-acre parcel at the northwest corner of Pleasant Hill Road and Deer Hill Road would likely

result in a 100% diminution of value, because the parcel is utterly inappropriate for a single-family home. In my opinion, a diminution in value of this magnitude is a "taking" under the Fifth Amendment to the United States Constitution, and the related provisions of the California Constitution (Art I, §19).

The proposal is not consistent with the General Plan. The City's General Plan specifically directs that an *Eastern Deer Hill Road Specific Plan* should be drafted and considered by the entire community. That Specific Plan process should examine the opportunities and constraints for development of the Dettmer Properties, considering both the rights of the property owner and the concerns of the City. (See General Plan Program LU-13.2.2, at p. I-23.) While an Opportunities and Constraints analysis was prepared and presented to the Commission in August 2006, it can fairly be said that the analysis considered only *constraints* on development, without considering the many *opportunities* presented by these unique properties. We ask the Commission to consider drafting a specific plan, or, at a minimum, thoroughly study the opportunities for higher density development or mixed-use development on at least a portion of the Dettmer Properties.

The proposal does not comply with State Law as it pertains to affordable housing. As I discuss in my letter to the City Council dated September 6, 2007, the ABAG Regional Housing Needs Allocations for Lafayette call for the provision of 361 units, 190 of which are to be Low or Very Low income units. Eliminating the potential for hundreds of units on the Dettmer Properties will make it impossible to comply with the ABAG requirements. Given that the City would be unable to meet its ABAG allocation without utilizing the Dettmer Properties, the proposed downzoning would run afoul of the California Government Code §65863(b), which reads as follows:

> (b) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1), and (2) of subdivision (h), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:
>
> > (1) The reduction is consistent with the adopted general plan, including the housing element.
> >
> > (2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

In my opinion, neither of the required findings can be made. Goal H-3 of the Housing Element of the General Plan calls for the *expansion* of affordable housing opportunities. The downzoning proposal does the opposite. More importantly, a detailed review of the inventory of underdeveloped parcels in the City reveals that the City's share of the regional affordable housing needs cannot be accommodated without the Dettmer Properties. Realistically, the properties listed in Table 31 of the General Plan cannot provide for the City's affordable housing needs, because many of the properties listed are already developed and unlikely to be redeveloped in the foreseeable future. Therefore, the second finding cannot be made, and State Law prohibits the downzoning of the Dettmer Properties.

The proposal illegally "spot zones" the Dettmer Properties. As spelled out in the 2004 Letter, the proposal to downzone the Dettmer Properties, especially those on the corner of Deer Hill Road and Pleasant Hill Road, treats these parcels inconsistently with the similarly situated parcels at that intersection. Both the northeast and southeast corners of this intersection have been allowed "urban" uses: a gas station on the southeast corner, and a high school on the northeast corner. These are similar parcels to the Dettmer Properties at that intersection; state law mandates that the Dettmer Properties therefore be treated similarly.

The current APO zoning allows for reasonable use of the Dettmer Properties. Development of these parcels under the APO zoning can be a benefit to the City with the oversight of the Commission and the City Council. However, under the proposed single-family zoning, no reasonable buyer would purchase a home on either corner of this intersection, given the intersection's urban street layout and urban uses across the street. The City would be singling out these two parcels for downzoning, while parcels similarly situated are allowed to continue their high-density uses. "A city cannot unfairly discriminate against a particular parcel of land, and the courts may properly inquire as to whether the scheme of classification has been applied fairly and impartially in each instance." *Arnel Development Company v. City of Costa Mesa,* 126 Cal.App.3d at p. 336. Here, the proposed downzoning will clearly allow the Dettmer Properties fewer rights than those enjoyed by the owners of surrounding properties similarly situated.

The City's proposal is a "Project" under CEQA and is therefore subject to CEQA review. CEQA Guidelines §15378 reads, in pertinent part, as follows:

> (a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

> (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, *enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof* pursuant to Government Code Sections 65100-65700. (Emphasis added.)

The City's proposal is therefore a "project" under CEQA and subject to CEQA review. To date, we have not seen any environmental review performed by staff in support of the City's proposed downzoning of the Dettmer Properties. The CEQA review process must take place while there is still opportunity for the process to influence the project. Otherwise, the CEQA process becomes an exercise in rationalization. Here, the project has been improperly defined and refined without the benefit of CEQA review, denying the Commission and Council the benefit of knowing the environmental impacts of the project before making a decision to go forward with it. The environmental analysis should be prepared before the Planning Commission makes specific determinations regarding the proper zoning for the Dettmer Properties.

Conclusion

For all reasons set forth herein, we respectfully request that the City Planning Commission work with the Dettmers to come to a fair and rational decision on the disposition of the Dettmer Properties. In so doing, we request that the Commission refrain from continuing the process of downzoning the Dettmer Properties until the Eastern Deer Hill Road Specific Plan has been drafted in accordance with the General Plan and the proposal has undergone a proper CEQA analysis.

Sincerely,

Martin E. Lysons

MEL:kra
Enclosures: *(1) 2004 Letter*
(2) Letter from Martin E. Lysons to City Council dated September 6, 2007

cc w/encls.: Ms. Christine Sinnette, Senior Planner
Ms. Anna Maria Dettmer

LAW OFFICES OF
GAGEN, McCOY, McMAHON & ARMSTRONG
A PROFESSIONAL CORPORATION

WILLIAM GAGEN, JR.
GREGORY L. MCCOY
PATRICK J. MCMAHON
MARK L. ARMSTRONG
CHARLES A. KOSS
MICHAEL J. MARKOWITZ
RICHARD C. RAINES
VICTOR J. CONTI
BARBARA DUVAL JEWELL
ROBERT M. FANUCCI
ALLAN C. MOORE
STEPHEN T. BUEHL
AMANDA BEVINS
MARTIN LYSONS
KATHERINE S. ZELAZNY
ERIC S. QUANDT
MELINDA K. STANISH
LAUREN E. DODGE
ANNETTE M. KNOX

OF COUNSEL
LINN K. COOMBS

DANVILLE OFFICE
279 FRONT STREET
P.O. BOX 218
DANVILLE, CALIFORNIA 94526-0218
TELEPHONE: (925) 837-0585
FAX: (925) 838-5985

NAPA VALLEY OFFICE
THE OFFICES AT SOUTHBRIDGE
1030 MAIN STREET, SUITE 212
ST. HELENA, CALIFORNIA 94574
TELEPHONE: (707) 963-0909
FAX: (707) 963-5527

Please Reply To:
Danville

November 17, 2004

RECEIVED
NOV 17 2004
CITY OF LAFAYETTE
PLANNING DEPT.

Hand-Delivered November 17, 2004

Mike Anderson, Chair
Planning Commission
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Re: GP03-04, City of Lafayette (Applicant) Amendment to General Plan Map
Dettmer Properties

Dear Chair Anderson and Planning Commissioners:

Our law offices represent Ms. Anna Maria Dettmer with regard to land use issues that have arisen concerning her ownership of certain properties in the Eastern Deer Hill Road area in Lafayette, identified as follows: APN 232-150-027; APN 232-150-028; APN 232-140-010; and APN 232-140-016. These parcels (together the "Dettmer properties"[1]) are shown on Attachments A (ownership map) and B (General Plan and zoning designation map) to the City's Staff Report for the Planning Commission hearing on November 18, 2004 ("Staff Report"). For the Planning Commission's convenience, copies of such Attachments are attached hereto as Att. 1 and Att. 2, respectively.

By notice dated October 18, 2004, the City of Lafayette ("City") indicated that the City is considering amending its General Plan and zoning ordinance, to reclassify and rezone the referenced Dettmer properties. The proposed General Plan amendments and rezonings are set forth in Attachment C to the City's Staff Report. For the Planning Commission's convenience, a copy of such Attachment is attached hereto as Att. 3.

[1] Ms. Dettmer owns the properties through a trust as follows: "Anna Maria Dettmer, Trustee of the AMD Living Trust." Ms. Dettmer is the daughter of Mr. Anthony Gus Lagiss, who currently resides on one of the properties at 3233 Deer Hill Road.

Summary and Statement of Objection to City's Proposed Action

On behalf of Ms. Dettmer, we respectfully object to the City's proposed General Plan amendments and rezonings ("proposed action"), and we request that the City Planning Commission refrain from the proposed action or from making further recommendations to the City Council unless/until the Eastern Deer Hill Road Specific Plan has been drafted as required by the City's current General Plan.

A reading of the Project Description and Two Options (Att. 3 hereto) clearly shows what would be the "end result" of the City's proposed action. The two Dettmer properties currently designated as APO/MFR[2] have a combined General Plan density of 836 units. That figure (836) would be *reduced* to a density of approximately 6 units or less. That would result in a greater than 99% reduction. The two properties currently designated as LD/SFR and RR/SFR[3] have a combined General Plan density of 46 units. That figure (46) would be *reduced* to a density of approximately 4 units or less, a 91% reduction. Similarly, the City's zoning code would be amended to reflect the General Plan's reduction of density on the Dettmer properties. The proposed action, combined with the City's recently adopted Hillside Development Ordinance, will effectively preclude any further development on the Dettmer properties.

Any reasonable person looking at the City's proposed action can see that the City is proposing to "take" all economically viable use of the Dettmer properties. Such a "taking" is a clear violation of the Fifth Amendment to the United States Constitution, and the related provisions of the California Constitution (Art I, §19).

The City's General Plan, revised just two years ago, does not require the proposed action. Instead, the City's General Plan continues to designate the APO properties for office and multiple family residential use, and the General Plan specifically directs that the area should be part of an extensive *community planning process*, wherein the *Eastern Deer Hill Road Specific Plan* should be drafted and considered by the entire community. Through that Specific Plan process, the opportunities and constraints of the subject properties can be identified; the rights of each the property owner in the area would be considered; and the concerns of the City would be addressed. (See General Plan Program LU-13.2.2, at p. I-23.)

[2] The Dettmer properties referenced as APN 232-150-027 and APN 232-150-028 have a General Plan designation of Administrative/Professional/Office/Multifamily Residential ("APO/MFR").
[3] The Dettmer properties referenced as APN 232-140-010 and APN 232-140-016 have a General Plan designation of Low Density Single Family Residential ("LD/SFR") and Rural Residential Single Family ("RR/SFR").

The City, however, has elected *not* to draft the Eastern Deer Hill Road Specific Plan as required by the General Plan. The City's sole stated reason for not drafting the Deer Hill Road Specific Plan is as follows: *Due to "budget constraints," the City does not have the money to plan for this area at this time.*

Thus, instead of following the express mandate of the General Plan to conduct a thorough, community planning process, and thereafter to prepare the Eastern Deer Hill Road Specific Plan, the City has elected to merely re-designate the entire area for an open space use. The City's proposed action may indeed save the City money and staff time, but it results in a "taking" of the Dettmer properties without any of the planning processes or protections provided for in the General Plan, and in clear violation of the Federal and State Constitutions.

Please note here that the proposed General Plan amendments from APO to "Rural Residential" are drastic amendments, redesignating the properties from a *high density use* to a *natural and scenic lands (open space) use*. The General Plan lists the category of "Rural Residential" under "Natural and Scenic Land Uses," and provides that the designation "is intended to retain hillsides in a natural condition as feasible..." The General Plan further states that development in these open space areas is to be allowed "only when it is subordinate to and supportive of the preservation of the natural conditions." (See General Plan at p. I-7)

Thus, the City is proposing General Plan amendments to change the land uses on the Dettmer properties from high density uses to open space uses. These significant and drastic amendments, proposed without any study or analysis, and proposed without the Specific Plan as required by the General Plan, will effectively "take" the Dettmer properties for open space uses.

Set forth below are our specific comments with regard to our opposition to the City's proposed action.

1. The City's Current General Plan Requires Adoption Of The Eastern Deer Hill Road Specific Plan.

A. The General Plan Text On Its Face Mandates The Adoption Of The Eastern Deer Hill Road Specific Plan.

The City's current General Plan, as updated and revised just two years ago in 2002, provides that the Dettmer properties adjacent to Pleasant Hill Road *remain designated as APO/MFR*. The City could have re-designated the Dettmer properties at the time of the General Plan revisions, but chose not to do so, and instead set forth its clear path for the Dettmer properties (and other properties in the Eastern Deer Hill Road

area) in the General Plan. That clear path requires a "careful and detailed analysis" of all "opportunities and constraints" in the area, and thereafter the adoption of the Eastern Deer Hill Road Specific Plan:

> This area deserves a *careful and detailed analysis of all the opportunities and constraints that will form the basis of future land use decisions*. It is therefore recommended that *a specific plan be prepared for this area immediately following the adoption of the General Plan*. (Emphasis added.) (General Plan at p. I-23)

The City is now proposing to ignore the above mandate. Instead, the City's proposed action consists merely of a re-classification of all properties to low density (open space) uses, without the "community planning process" or "careful and detailed analysis" as required by the General Plan. The City's proposed action contains no analysis at all, and instead "solves" any planning issues by prohibiting almost any future development on the Dettmer properties.

The City's proposed action reflects only a financial concern (the City's budget), which is unrelated to planning and zoning laws and practice. The City's proposed action shows a pre-commitment to a certain outcome (save City monies by not adopting a Specific Plan), and does not reflect any study or analysis.

The General Plan is very specific in its recommendation for a Specific Plan. Please reference Program LU-13.2.2, which states:

> Prepare through a *community planning process* an *Eastern Deer Hill Road Specific Plan* that includes the following requirements.... [following are four specific requirements of the Eastern Deer Hill Road Specific plan]. (See General Plan at page I-23.)

Please note that the General Plan confirms that a community planning process is required. That community process, which has been successfully initiated and performed many times by the City, would establish the opportunities and constraints of the property, as referenced in the General Plan. The General Plan further names the new Specific Plan (the Eastern Deer Hill Road Specific Plan) and sets forth with specificity the requirements of the new Specific Plan.

From a legal standpoint, all General Plans must be "internally consistent," both among its elements and within each of its elements.(See Gov't Code §65300.5). Internal consistency requires that general plan diagrams of land use reflect the written policies and programs in the text for each element. (See *Citizens Ass'n for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App. 3d 151 (1985).

Here, the City's current General Plan provides a land use diagram, confirming the designation of the Dettmer properties as APO/MFR, LD/SFR, and RR/SFR. As stated, in 2002 *the General Plan drafters could have amended the General Plan land use map to provide that each of these properties was/is designated low density residential, but the City did not take such action.* The General Plan text, in confirming the current General Plan designations, instead confirmed that further City action would require a thorough, community planning effort, and a Specific Plan, which would identify all relevant opportunities and constraints.

We further note in this regard that the General Plan has other elements that are interdependent on the Land Use element. (See Gov't. C. §65302) For example, the Housing element generally provides for a certain amount of housing, including a diversity of housing prices, within the City and on the subject properties. The impact of the proposed action should be carefully weighed against the goals, policies and requirements of the housing element and other portions of the General Plan. (See Gov't. C. §65580, et seq.) We believe that the City would need to re-draft and amend the Housing element to be consistent with the significant reduction in housing reflected in the proposed action.

Ms. Dettmer and other property owners in the area relied upon (and continue to rely upon) the General Plan as revised in 2002. Ms. Dettmer and presumably other property owners did not challenge the General Plan when adopted, because the General Plan designations for the subject properties remained the same, and the General Plan text confirmed that any new designations would be made only after a thorough community planning process, an analysis of opportunities and constraints, and a Specific Plan.

Please note further that the City's General Plan provides for the Deer Hill Road Specific Plan: (i) as a "Goal" in the text of the General Plan; (ii) as part of a Policy for the General Plan, and (iii) as a "Program." The General Plan defines these terms as follows:

> Goal: A general, overall and ultimate purpose, aim or end toward which the City will direct effort.
>
> Policy: A specific statement of principle or guiding action that implies a clear commitment. A general direction that the City elects to follow in order to meet its goals.
>
> Program: An action, activity , or strategy carried out in response to adopted policy to achieve a specific goal. (See General Plan at Introduction, p. 5).

The City's General Plan sets forth: (i) a reference in the General Plan text to the Goal of drafting a new Specific Plan immediately following the adoption of the General Plan; (ii) a reference in the Policy section to consider options for the area; and (iii) the implementing Program, i.e., *the drafting of the Eastern Deer Hill Road Specific Plan.*

It is clear, under the General Plan's own definitions of goals, policies and programs, that the City evidenced a clear commitment to (i) keep the current designation of the Dettmer properties, pending: (ii) the drafting of a new Eastern Deer Hill Road Specific Plan. Any other reading of the General Plan would make the document utterly inconsistent and invalid.

B. The City Planning Staff Recognized the Requirement to Draft the Eastern Deer Hill Road Specific Plan

The City's Staff Report contains a "Background Chronology of Eastern Deer Hill Road" at Attachment D (hereinafter "Chronology"). For the convenience of the Planning Commission a copy of Attachment D is attached hereto as Att. 4. The Chronology confirms that the new General Plan was revised and updated on October 8, 2002. As shown herein, the revised General Plan, as revised, *clearly provided for the preparation of the Eastern Deer Hill Road Specific Plan at Program LU-13.2.2.* However, in the next line item, the Chronology states as follows:

> February 2003: At its goal setting session for 2003/2004, the Council decided not to include preparation of the Deer Hill Road Specific Plan as a goal *due to budget constraints and other significant projects taking staff's time...*

In other words, the Council simply decided, following adoption of its General Plan, to not follow the General Plan goals, policies and programs, and to not prepare the Deer Hill Road Specific Plan as referenced in the General Plan.

The sole reason for the Council's action appears clear in the Administrative Record. *The Council decided that the City does not have the budget to plan for the subject properties.* The Council thus instead directed merely that the properties be re-classified to a very low density residential use (open space use), without the General Plan's required analysis, community involvement, or Specific Plan.

The minutes for the February 24, 2003 City Council meeting clearly show why the Council made its decision to not follow the General Plan. For the convenience of the Planning Commission those minutes are attached hereto at Att. 5.

At the February 24, 2003 City Council meeting, the Staff stated that because of "budget constraints," there were three options for the Council, as follows:

> (1) do nothing now, and reconsider preparation of the Specific Plan next year;
>
> (2) initiate a General Plan Amendment to change the current APO designations; or
>
> (3) direct staff to prepare a Specific Plan.

At the meeting, the Council requested Staff to set forth its preferred Option. Staff recommended Option 1 (defer the Specific Plan for one year), because "staff believes that the General Plan would establish a policy for that area..." The minutes reflect Staff's statement as follows:

> Staff's preference, base upon existing workload, would be Option 1 [defer Specific Plan for one year]...There is no threat to the property at this time and staff believes the *language in the new General Plan would establish a policy for that area.* Staff's second choice would be option 3 and do a modest specific plan and regardless of how the designation came out, *there at least would be a thorough analysis of all of the different constraints and opportunities for the property.* The third preference would be Option 2 [initiate General Plan amendments]. (See Att. 5, Lafayette City Council minutes for February 24, 2003, at p. 7)

Staff further stated as follows:

> Staff believes that this is the most visible set of parcels in town and deserves *extreme* consideration *by the entire community* and that is why the $150,000 study was recommended last year. If this [preparation immediately of a Specific Plan] is not an option, not acceptable or affordable to the City, then Option 1 [deferral of the Specific Plan for one year] was staff's preference. (See minutes for February 24, 2003 hearing, at p. 7)

Staff confirmed, and rightfully so, that the General Plan establishes a clear policy for having a community planning process toward the drafting of the Eastern Deer Hill Road Specific Plan. Staff further confirmed that the only thing preventing the City's consideration of that process was/ is a current lack of funds. (See minutes for February 24, 2003 hearing, at p. 7)

We do not believe that the City's current budget problems should be the underlying reason for failing to follow the General Plan, or for abandoning the Eastern Deer Hill Road process as required by the General Plan. We believe, as staff indicated on February 24, 2003, that the General Plan establishes a policy for the drafting of the Specific Plan.

We concur with Staff that if the City does not have enough money to "plan" the area now, the City should defer the Specific Plan process for a year, or until the City can properly fund the Specific Plan process. We concur with Staff that if even a modest Specific Plan is performed, at least then there will be "a thorough analysis of all the different constraints and opportunities." The City's proposed action begs the following question: if the City does not have the budget to "plan" for the Eastern Deer Hill Road area as required by the General Plan, then how can the City justify its proposed action, designating the Dettmer properties to a very low density? In other words, if the City does not have the budget to perform the thorough planning analysis required by the General Plan, then the City should *defer* such planning until it such time that it is economically feasible. Planning decisions should be made on the basis of land use and environmental principles, not on the basis of the current budget.

The City Council, however, has chosen Staff's least-desirable option, Option 3. That Option simply provides for changing the land use designations of the properties immediately, without the "thorough analysis" recommended in the General Plan or by Staff. As set forth herein, that choice is based purely on the City's current budget, and not on valid land planning principles.

We note here that the proposed action does not contain any of the analysis or protections that would be provided in a Specific Plan. The drafting of a Specific Plan would allow for a *discussion of project alternatives.* That discussion might lead to a "middle ground" which would provide for reasonable development on the Dettmer properties, while still allowing the City to achieve its planning goals for the property. For example, most folks that have walked the property recognize that the area at the corner of Highway 24 and Pleasant Hill Road (APN 232-150-027) contains a flat, plateau area that could support development with few visible impacts on the surrounding area. A thorough discussion of site constraints and opportunities could recognize this area for potential development, while providing for the restriction of development on other, steeper areas.

Instead, by merely re-classifying the Dettmer properties for low density residential use, the City effectively prohibits any such sensitive site analysis.

2. The City's Proposed Action Will Result In A "Taking" Of All Reasonable Economic Use Of The Dettmer Property.

The Fifth Amendment to the United States Constitution states in part: "...nor shall private property be taken for public use, without just compensation." The California Constitution contains similar language (See Cal. Const. Art I, §19.)

These constitutional provisions, combined with case law, confirm that if a legislative act, ordinance, regulation or similar decision is so restrictive as to deprive the owner of economically viable use of the property, then the property, for all practical purposes, has been "taken" without compensation to the landowner. (See Longtin's *California Land Use*, 2nd Ed., at §1.80.)

In this case, a reading of the Project Description and Two Options (see Att. 3, hereto) *clearly shows the "taking" of economically viable use that will occur as a result of the City's proposed action.* The two Dettmer properties currently designated as APO/MFR have a combined General Plan density of 836 units. That figure (836) would be *reduced* to a density of approximately 6 units or less. The two properties currently designated for LD/SFR and RR/SFR have a combined General Plan density of 46 units. That figure (46) would be *reduced* to a density of approximately 4 units or less. Similarly, the City's zoning code would be amended to reflect the General Plan's new classifications for the Dettmer properties. The Fifth Amendment and related case law generally confirm this significant loss of property rights will ultimately result in a taking of the property.

A primary purpose of the "takings" clause and related case law is to prohibit the government (here, the City) from forcing individual property owners to bear the burden alone that, in fairness and justice, *should be borne by the public as a whole.* (Longtin's *California Land Use*, *supra*, at §1.81[1], 2004 Update, citing *Dolan v. City of Tigard* (1994) 114 SCt 2309, 2316; and *Nollan v. California Coastal Commission*(1987) 107 SCt 3141, 3147.)

Here, the City appears to be "protecting" the Eastern Deer Hill Road area as an "entryway" for the benefit of the entire City, at the expense of the individual landowners in the area, including Ms. Dettmer. If the City desires to designate the properties for little or no development for the purpose of establishing a City gateway or entryway, then the City must compensate the landowner for such use.

We note further here that the City in the year 2002 also adopted Ordinance No. 528, adding Chapter 6.20, "Hillside Development") to the City's Municipal Code ("Hillside Development Ordinance"). The Hillside Development Ordinance establishes

an overlay district which appears to encompass a significant portion of the Dettmer properties.

The Hillside Development District prohibits new development primarily in the following five ways:

(i) No Development Within 400 Feet of Class 1 Ridge. No development may take place within 400 feet of the centerline of a Class I Ridge.

(ii) No Development Within 250 Feet of Class II Ridge. No development may take place within 250 feet of the centerline of a Class II Ridge.

(iii) No Development on Steep Slopes: No development on slopes over 35%; each lot must have naturally contoured site of 30% or less.

(iv) No Development At 15 Degree Declination: No portion of a structure may be erected adjacent to a Class I or Class II Ridge that is higher than a plane sloping downward at a declination of 15 degrees from the horizontal intercept of the ridge.

(v) No Off-Site Visibility: Each structure must be located *away from a prominent location* such as a ridgeline, hilltop, knoll or open slope; and shall be *substantially concealed* by vegetation when viewed from lower elevations from public owned properties.

These five Hillside Development Ordinance restrictions, or "development restrictions," if applied strictly and concurrently with the new General Plan and zoning classifications, *would effectively prohibit any new development on the Dettmer properties.* As further set forth herein, we believe that the Hillside Development Ordinance was intended to apply to hillside areas of the City, while the Dettmer properties have areas of plateau that are available for development without causing visibility problems. Again, a Specific Plan study would provide a site specific analysis.

3. The City's Proposed Action is an illegal "spot zoning" or downzoning of the Dettmer Property

Separate from the clear "takings" issues that have arisen, we believe the City's proposed action to rezone the Dettmer properties will result in an invalid spot zoning or downzoning of the Dettmer properties.

It appears from a reading of the referenced minutes and the entire Administrative Record, that the Dettmer properties and other properties within the Deer Hill Road area have been singled out for downzoning, and denied the privileges and rights of similarly

situated properties. The proposed General Plan classifications and rezoning will prevent development of the Dettmer properties consistent with the surrounding area, and will give Ms. Dettmer fewer rights than the owners of surrounding properties similarly situated. (See *Ross v. City of Yorba Linda* (1991) 1 CA 4th 954).

We note with regard to the above that developed properties in the area have been permitted such uses as a service station, a large urban high school with administrative offices on Pleasant Hill road, a Montessori School, a P-1 planned development at 4 units per acre, and single family residences at R-20 densities on Deer Hill Road. It is important further to note that three of the four quadrants of Highway 24 and Pleasant Hill Road are fully developed with commercial or medium density residential uses. The subject quadrant is closest to the freeway on and off ramps and to BART of all four quadrants.

4. The City's Proposed Action Does not comply with the Requirements of the California Environmental Quality Act (CEQA).

At this time, we are not aware of any environmental review that has been performed by staff for the City's proposed action.

The California Environmental Quality Act (CEQA) clearly states that the adoption and amendment of a General Plan, and the amendment of a zoning ordinance, are "projects" requiring environmental review. (CEQA Guidelines, §15378)

CEQA clearly requires that environmental review be performed "as early as feasible in the planning process to enable environmental considerations to influence project program and design..." (CEQA Guidelines, §15004(b)).

The courts have confirmed that performing the environmental review as part of the public participation and hearing process is required:

> ...environmental problems should be considered *at a point in the planning process where genuine flexibility remains*...A study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to [later] administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA...(see Remy, Thomas, *Guide to the Environmental Quality Act*, 10th Ed., 1999, at p.17).

Here, staff has apparently requested that the Planning Commission *first* confirm its intent to amend the General Plan and zoning ordinance as proposed; and *thereafter* staff will prepare environmental review addressing and supporting the Commission's decision. This procedure effectively denies the Commission and the public any environmental analysis of the proposed action until the "momentum" to adopt the General Plan and zoning amendments has been established. We believe an environmental analysis should be prepared *prior to any Planning Commission consideration* or action on these issues. That analysis could raise environmental impacts that would have a bearing on the Planning Commission's decision to take the proposed action.

Conclusion

For all reasons set forth herein, we respectfully object to the City's proposed General Plan amendments and rezonings, and we request that the City Planning Commission refrain from the proposed action or from making further recommendations to the City Council unless/until the Eastern Deer Hill Road Specific Plan has been drafted as required by the City's current General Plan.

Very truly yours,

Allan C. Moore

Enclosures: Attachments (1) - (5)

cc: Ms. Christine Sinnette, Senior Planner (*w/enc.*) ✓
Ms. Anna Maria Dettmer (*w/enc.*) ✓

ACM:kra

Item 6A

City of Lafayette Staff Report

For: Planning Commission

By: Christine Sinnette, Senior Planner

Date Written: March 12, 2008

Meeting Date: March 20, 2008

Subject: GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.

BACKGROUND

Planning Division staff have been working on City-initiated General Plan and zoning amendments (GP03-04 and RZ02-04) for seven properties in the Eastern Deer Hill Road area (see Attachment 1 – Parcels and Ownership). The subject properties are listed in Table 1 with their current General Plan and zoning designations. See Attachment 2 – Current General Plan and Zoning.

Table 1
Eastern Deer Hill Road Properties

Properties	Property Owner	Current General Plan	Current Zoning
APN 232-140-014	State of California	Administrative/Professional/ Office/Multifamily Residential	APO
APN 232-150-027	AMD Trust (Dettmer)	Administrative/Professional/ Office/Multifamily Residential	APO
APN 232-150-028	AMD Trust (Dettmer)	Administrative/Professional/ Office/Multifamily Residential	APO
APN 232-140-004	Naglicki	Low Density Single Family Residential	R-20
APN 232-140-010	AMD Trust (Dettmer)	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10
APN 232-140-016	AMD Trust (Dettmer)	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10
APN 232-150-021	Holding	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10

STAFF RESPONSE TO PLANNING COMMISSION

The Planning Commission continued action on these applications from their meeting of February 21, 2008, and directed staff to consider or provide the following information.

Area exclusions in average slope calculations. When considering a subdivision, the allowed residential density based on the average slope of a property can be affected by a property owner's ability to request that parts of an unsubdivided parcel be excluded in the average slope calculation. Staff mentioned that area exclusions for parcels 10, 16, and 27 might be applicable because they contained defined, incised drainage channels. Upon further review of these three parcels including review of a 1" to 100' scale topographic map[1] prepared by HJW GeoSpatial, Inc. using aerial surveys, it is staff's opinion that steep slope exclusions would not be applicable. In order to be excluded, the area must consist of a distinct topographical feature such as a deep ravine, creek bank, or a slope which varies substantially from and is inconsistent with the topography of the remainder of the parcel. Although the contours indicate ravines or drainage channels on these properties, the contour intervals do not display topography that is distinct or inconsistent with the topography of the remainder of the site and therefore approval of an

[1] This is the same map used by Schell & Martin, Inc. for the average slope calculations.

exclusion by the Planning Manager is unlikely. The case is different for Parcel 28. Parcel 28 is characterized by a steep west-facing slope rising from the middle of the property which could qualify for an exclusion. However, there is less than one acre of land with a 30 percent or less slope so even with an exclusion, only one dwelling unit would be allowed.

Effect of split zoning on property. The effect of split zoning was previously discussed in the staff report for the Planning Commission meeting of November 16, 2006 and is restated below.

City Attorney Malathy Subramanian prepared the following response to the Commission's question about split zoning on a parcel.

> *To illustrate the result of split zoning, we will use the example of a nine acre parcel in the City that is divided by zoning districts such that 3 acres are zoned R-40 and 6 acres are zoned LR-10. If the owner pursues a subdivision of the 3 acres zoned R-40 to be divided into three lots, the remaining 6 acre parcel zoned LR-10 cannot be developed with a dwelling unit or as a separate lot under a LR-10 zoning designation, as it does not meet the minimum lot area requirement of 10 acres. It should be noted that the minimum lot area of an existing L-R parcel that is less than 10 acres on July 8, 2002 (the date when the new hillside regulations and LR-10 rezonings were adopted) is the area of the parcel that existed on that date. In this case, if the parcel existed as of July 8, 2002, a single family residence could be permitted on the 9 acres. However, because the owner has decided to subdivide the parcel, the remaining parcel will now become 6 acres and will no longer be grandfathered in with the lower minimum lot area for LR-10. Therefore, the owner can either subdivide the 3 acre lot, which will cause the remaining 6 acres to further nonconform to the LR-10 zoning or the owner can develop one single family residence on the existing 9 acres under the LR-10 zoning.*

The properties currently zoned LR-10 (parcels 10, 16, and 21) have been zoned a form of LR since at least 1980. The only thing that has changed since 1980 is the minimum lot size/allowed density.

Suggestion of LR-5 zoning. At the last meeting, staff presented the Commission with the possibility of considering LR-5 zoning for one or more of the subject properties. Staff had not presented this option before because of the LR-10/LR-5 analysis that was done after the 2002 General Plan amendments and rezonings. Per City Council direction, staff conducted an analysis of the LR-10 zoned properties to determine if they should be considered for a change to LR-5. For properties with split zoning, this analysis only included the portion of the property zoned LR-10. For various reasons, the LR-10 portions of parcels 10, 16, and 21 were deemed inappropriate for reconsideration and retained their LR-10 zoning. However, staff does not believe that just because the LR-10 portions of these properties were not recommended for rezoning, that LR-5 cannot be considered for the whole of these properties or the other subject properties.

Provide more information on the MRP zoning district. The MRP zoning district (multiple-family residential/professional office, one-story) is classified in the zoning ordinance as a residential land use district. The Planning Commission began discussing the MRP district in September 2006 after completion of the Eastern Deer Hill Opportunities and Constraints Analysis. Their discussion centered around the appropriateness of the MRP zoning designation for Parcel 28 and for the portion of Parcel 27 fronting on Pleasant Hill Road. Staff mentioned this district again at the last meeting as it could potentially fit in with the City Council's direction that parcels with APO zoning be changed to residential zoning. See Attachment 3 for more information on the MRP district as well as the APO, R-20, LR-5, and LR-10 zoning districts.

Traffic counts for residential and office land uses. The Commission requested that staff provide some information on traffic generation counts for residential and office land uses. Using data from the Institute of Transportation Engineers publication Trip Generation, 7th Edition, staff has compiled the following table for various land uses that would be allowed in the LR, R-20, and MRP zoning districts.

Table 2
Trip Generation Rates by Land Use

Land Use (code)	Average Vehicle Trip vs.	Day/Time	Average Rate
Single Family Detached (210)	Dwelling Units	Weekday	9.57
Single Family Detached (Lafayette standard)	Dwelling Units	All	14.20
Low-Rise Apts. (221) ≥ 4 units/bldg.; 1-2 stories	Dwelling Units	Weekday	6.59
General Office Building (715) single-tenant	1000 s.f. GFA	Weekday	11.57
General Office Building (710) multi-tenant	1000 s.f. GFA	Weekday	11.01
Medical-Dental Office Building (720) multi-tenant	1000 s.f. GFA	Weekday	36.13
Day Care Center (565)	1000 s.f. GFA	Weekday	79.26
Religious Institution (560)	1000 s.f. GFA	Sunday	36.63
Nursing Home (620)	1000 s.f. GFA	Weekday	6.10
Recreational Community Center (495)	1000 s.f. GFA	Weekday	22.88
"	1000 s.f. GFA	Saturday	9.10
"	1000 s.f. GFA	Sunday	13.60

STAFF COMMENTS AND ANALYSIS

Based on the Schell & Martin average slope calculations and application of the lot area and density table in section 6-2043, staff has prepared Table 3. Table 3 is a revision of the one shown in the February 21st staff report and no longer includes the calculations from split zoning or possible approval of an exclusion as they are no longer applicable.

Table 3
Dwelling Unit Yield Based on Slope and Lot Area

Property Number	14	27	28	04	10	16	21
Property Size	1.36 ac.	22.26 ac.	1.91 ac.	.5 ac.	17.81 ac.	38.13 ac.	20.75 ac.
Current Zoning	APO	APO	APO	R-20	Split R-20 & LR-10	Split R-20 & LR-10	Split R-20 & LR-10
Average Slope of Total Lot	30.9%	24.3%	26.7%	21.0%	42.4%	37.3%	34.0%
Maximum Allowed Density per § 6-2043	.48 du[2]	14.0 du[2]	.95 du[2]	.38 du	1.78 du	5.33 du	4.77 du

One factor the Commission may want to consider when looking at possible zoning designations for the subject properties, particularly MRP, is the trip generation rate of various land uses. In order to use the trip generation rates in Table 2, possible development scenarios must be assumed for the portion of Parcel 28 that is 15 percent or less in slope (.71 ac.) and the lower portion of Parcel 27 (1.76 ac.). To estimate the gross floor area (G.F.A.) for uses with trip generation rates based on G.F.A, staff used a floor area ratio (F.A.R.) of .30 times the area of the site for nonresidential uses[3]. For residential uses, staff used the number of dwelling units from Table 3.

Table 4
Average Trips for MRP Land Uses

Land Use	Day	Average Rate	Parcel 27 (76,666 s.f.)	Average Trips	Parcel 28 (30,928 s.f.)	Average Trips
Single Family Detached	Weekday	9.57/du	14	134	1	10
Single Family Detached (Lafayette standard)	All	14.20/du	14	199	1	14
Low-Rise Apts.	Weekday	6.59/du	14	92	N/A	N/A
General Office, single-tenant	Weekday	11.57[4]	23,000 GFA	266	9,280 GFA	107
General Office, multi-tenant	Weekday	11.01[4]	23,000 GFA	253	9,280 GFA	102
Medical-Dental Office, multi-tenant	Weekday	36.13[4]	23,000 GFA	831	9,280 GFA	335
Day Care Center	Weekday	79.26[4]	23,000 GFA	1823	9,280 GFA	735
Religious Institution	Sunday	36.63[4]	23,000 GFA	842	9,280 GFA	340
Nursing Home	Weekday	6.10[4]	23,000 GFA	140	9,280 GFA	57
Recreational Community Center	Weekday	22.88[4]	23,000 GFA	526	9,280 GFA	212
"	Saturday	9.10[4]	23,000 GFA	209	9,280 GFA	84
"	Sunday	13.60[4]	23,000 GFA	313	9,280 GFA	126

[2] Only applicable if property is subject to Chapter 6-20.
[3] These are the F.A.R. used for offices in the MRO district.
[4] Trips per 1,000 s.f. G.F.A

In looking at the seven properties relative to their zoning designation, lot size, topography, biotic resources, applicability of hillside development regulations including slope vs. density and ridgeline setback areas, the development potential of each lot becomes clearer. Parcel 04 is zoned R-20, is 21,780 square feet in size and developed with one single-family home. Its development potential under the R-20 zoning designation is only one dwelling unit so there is no need for further analysis of Parcel 04.

Although Parcel 10 has a relatively flat area adjacent to Deer Hill Road appropriate for development, this 17.81-acre property is severely constrained by its 42 percent average slope. Regardless of the zoning designation, the maximum allowed density for Parcel 10 is one dwelling unit. Only a small portion of the parcel is within the setback of a Class II ridgeline. See Attachment 4 – Ridgeline Delineation and Development Setback.

Based on the average slope of Parcel 16, the maximum density would be 5 dwelling units. The property is currently developed with two houses, at least one of which is currently vacant and has lost its nonconforming status. There is also a telecommunications facility located onsite. This property has a well established drainage system and has areas within Class I and Class II ridgeline setbacks.

Parcel 21 is developed with a single family residence and outbuildings associated with a working small farm and livestock ranch. There is an active land use permit for a small-scale commercial recreation use. Most of the R-20 zoned portion is within the Class I ridgeline setback. The maximum allowed density based on the property's average 34 percent slope is four dwelling units.

Although parcels 14, 27, and 28 are located in the hillside overlay district, these properties would not be subject to the hillside development regulations of Chapter 6-20 because they are not residential lots. As stated in section 6-2013, LMC, application of the hillside overlay district, "The regulations of this article [Hillside Overlay District] apply in the hillside overlay district to (1) a residential lot existing on July 8, 2002, (2) a division of land into two or more lots and, (3) to the extent provided in chapter 6-24, to a lot line adjustment approved after July 8, 2002." As currently zoned, they would only be subject to Chapter 6-20 if the properties were to be subdivided.

Parcel 14 consists of a narrow, southward sloping site overlooking Highway 24. If the property were zoned residential, it would be subject to Chapter 6-20. Based on the average slope of 30.9 percent, only one dwelling unit could be allowed on this property. Given the consistency in site topography, it is unlikely that a request for exclusion would be approved even if requested. Therefore, regardless of the zoning designation, it is likely that only one dwelling unit would be allowed on this 1.36-acre parcel. Parcel 14 is not located within a ridgeline setback area.

Parcel 28 is a 1.91-acre site located adjacent to Pleasant Hill Road. It is relatively level adjacent to the roadway then slopes steeply to the west. It was once developed with a gasoline station. If the property were zoned residential, it would be subject to Chapter 6-20. Based on the average slope of 26.7 percent, only one dwelling unit could be allowed on this property. This parcel is entirely within a Class I ridgeline setback.

At 22.26 acres, Parcel 27 is the largest of the seven properties. It is developed with a residence and office buildings. It is physically divided by a drainage channel and topography into a 20.49± acre "upper" portion and a 1.76± acre "lower" portion adjacent to Pleasant Hill Road. It is the most visible of the seven properties and about one-third of the upper portion is located within a Class I ridgeline setback. If zoned residential it would be subject to Chapter 6-20. Based on the average slope of 24.3 percent, fourteen dwelling units could be allowed on the entire property.

As originally proposed by staff in 2004, GPA03-04 and RZ02-04 would reclassify two properties, Parcel 14 (State of California) and Parcel 27 (Dettmer) from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and rezone them from APO to LR-10 and reclassify Parcel 28 (Dettmer) from Administrative/Professional/Office/Multifamily Residential to Low Density Single Family and rezone it to R-20. Since that time, an opportunities and constraints analysis (OCA) has been prepared for the seven properties, average slopes have been calculated, and the Planning Commission has mentioned other zoning designations such as LR-5 and MRP.

The purpose of this hearing is for the Planning Commission to provide direction to staff on which specific properties within the Eastern Deer Hill Area should be included in the General Plan Amendment and rezoning applications and what the proposed designations should be. Based on the City Council's direction in 2003, discussions that occurred during the public hearings on the General Plan update, review of the OCA and average slope calculations, and comments by the public and Planning Commission since 2004, staff has prepared a list of options for project descriptions for GPA03-04 and RZ02-04. Staff recommends that the Planning Commission select Option 4. Option 4 eliminates the APO zoning designation, generally relates to the density allowed based on average slope if the properties were subdivided, takes into account regulatory and environmental constraints such as ridgeline setbacks and riparian and oak woodland habitats, and balances the City's desire to retain the semi-rural character of its hillside lands with the needs of private property owners.

Option 1 – Current Project Description

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
14	California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
27	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
28	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Low Density Single Family	APO	R-20

Option 2 – Alternative 4, 2002 General Plan

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
14	California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
27	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
28	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10

Option 3 – Considered During 2002 General Plan Update

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
04	Naglicki	Low Density Single Family Residential	Rural Residential Single Family	R-20	LR-10
10	Dettmer	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential Single Family	Split R-20 & LR-10	LR-10
14	California	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	LR-10
16	Dettmer	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential Single Family	Split R-20 & LR-10	LR-10
21	Holding	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential Single Family	Split R-20 & LR-10	LR-10
27	Dettmer	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	LR-10
28	Dettmer	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	LR-10

Option 4

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
04	Naglicki	Low Density Single Family Residential	No Change	R-20	No Change
10	Dettmer	Low Density Single Family Residential and Rural Residential Single Family	No Change	Split R-20 & LR-10	No Change
14	California	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	LR-10
16	Dettmer	Low Density Single Family Residential and Rural Residential Single Family	No Change	Split R-20 & LR-10	No Change
21	Holding	Low Density Single Family Residential and Rural Residential Single Family	Rural Residential-5 Single Family: Up to .2 du/acre	Split R-20 & LR-10	LR-5
27 (west of drainage)	Dettmer	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	LR-10
27 (east of Drainage)			Low Density Multi-Family Residential: Up to 17 du/acre		MRP
28	Dettmer	Administrative/Professional/ Office/ Multifamily Residential	Low Density Multi-Family Residential: Up to 17 du/acre	APO	MRP

Once the project description for the GPA and rezone are chosen, the appropriate environmental documents will be prepared. The environmental documents and applications will be brought back to the Planning Commission for one or more public hearings and for a recommendation to be forwarded to the City Council for final consideration on the applications.

PUBLIC NOTICE AND COMMENT

Public notice of the February 21st Planning Commission meeting was provided as required. Since these applications were continued from that meeting, no new public notification is required. A letter was submitted by Michael Henn on behalf of Anna Maria Dettmer and has been included as Attachment 5.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission select Option 4 and direct staff to proceed with the environmental review for GPA03-04 and RZ02-04.

ATTACHMENTS

1 Eastern Deer Hill Road Parcels and Ownership *(not included)*
2. Current General Plan and Zoning *(not included)*
3. Zoning District Excerpts – APO, MRP, R-20, LR-10, LR-5 *(not included)*
4. Ridgeline Delineation and Development Setback *(not included)*
5. Letter from Michael Henn, dated March 13, 2008

Michael Henn AICP
226 Wildwood Avenue
Piedmont CA 94610
March 13, 2008

RECEIVED
MAR 13 2008
CITY OF LAFAYETTE
PLANNING DEPT.

Chair and Members of the Lafayette
Planning Commission

Subject: Planning Commission Meeting March 20, 2008 re: GP03-04, RZ02-04 Dettmer Properties, Deer Hill Road

Dear Commissioners,

I am again representing Ms. Anna Maria Dettmer of Lake Oswego, Oregon, the owner of the majority of the properties subject to the current downzoning initiated by the City of Lafayette. At the February meeting I made the following points which are summarized as follows:

1. The City has not identified sufficient grounds to justify the substantial reduction in potential development of these level, accessible, and fully-serviced, close-in properties.
2. The sites' residential development potential is needed by the City to meet the upcoming, larger Regional Housing Needs Allocation (RHNA) assigned to the City by ABAG in accordance with California law.
3. There are insufficient sites remaining, without the subject property, to meet the *existing* Housing Element requirements.
4. The direct and indirect impacts of restrictions of development are subject to the California Environmental Quality Act. The cost of complying with these strict requirements must be borne by the City of Lafayette.

At the last meeting, staff and the Planning Commission apparently recognized that downzoning the subject properties LR-10 would not be appropriate, and the Planning Commission requested an analysis by staff of the MRO and MRP zones for a portion of the 22 acre site ("Christmas tree lot") and the former service station site. While we appreciate the City recognition that there were not significant development constraints on the portions of properties that front on Pleasant Hill Road, we believe the record is also clear that there have been no constraints identified to justify the downzoning of the bulk of the 22 acres containing the "Christmas tree lot", particularly the level "shelf" and homesite areas of approximately five acres where development could be easily screened from Highway 24 and Pleasant Hill Road.

At the last Planning Commission hearing, the former service station site was inaccurately described as being only a "sliver" by one downzoning proponent. This "sliver" actually contains about 31,000 square feet of level or near-level land. That is a larger area than some other familiar sites that are fully developed and are not perceived as being "too small," such as the old city office building at 251 Lafayette Circle, the Panfili Medical Office building on Dewing Avenue, or the existing Lafayette Library site on Moraga Road. These are sites that the Lafayette Housing Element identifies as vacant or underdeveloped and suitable for new multiple residential development, and each is substantially smaller than this "sliver".

I had also pointed out to the Commission that in order to downzone the subject properties, the city must make written findings supported by *substantial evidence* that the city's proposed reduction in density is consistent with the ***existing Housing Element***, and that the remaining sites identified in the Housing Element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 (Government Code 65863-b). When asked, staff asserted that there are adequate vacant and underdeveloped sites to meet the existing Housing Element's numbers. We are sure you agree that the "substantial evidence" test means more than a staff assertion. We believe it means the preparation and submittal of a site-by-site analysis of each of the properties identified in the several tables and graphics in the Housing Element, a cumulative and transparent assessment of what development potential remains for each site by income class, and then being able to make the findings that the remaining vacant and underdeveloped sites can adequately meet the current RHNA numbers.

Please also note that the current sites in the City's affordable-housing, site inventory (Table 31) will not be in compliance with State Law for the ***next RHNA cycle***. According to Government Code 65583.2(h).

> At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted. (AB 2348, 2004 Session)

It would seem that the State Legislature has become aware of some of the creative ways that cities have circumvented past affordable housing obligations. The sites that the Lafayette has heretofore identified as potentially meeting its very low and low income housing obligations are in commercial zones. Therefore, none of these sites can qualify to be used in the imminent new Housing Element for 50% of the 190 low and very low income units that the City will have to provide sites for, because these zones permit non-residential uses. While we are not necessarily proposing that the subject properties be planned and zoned to a multiple housing density, this new State requirement simply means that there are numerous reasons to find the

City's inventory insufficient. I might also point out that State law mandates that the sites for Low and Very Low Income housing have a minimum density of 20 units per acre. In order to have its new Housing Element approved and to the State HCD by June 2009, we believe the City needs to be currently assessing all sites in Lafayette where the required multiple housing densities can be accommodated with the least impact on adjacent single family residential homeowners. Since the subject properties should be among those sites studied, it seems premature to be going forward with any sort of downzoning.

In regards to the rezoning of the north side of Deer Hill Road to LR-5, we do not have enough information to know if there are reasons to oppose that change or not.

Very truly yours,

Michael Henn

cc: City Manager for distribution to the City Council

Chair Mitchell would like to add a condition of approval which would require the applicant to come up with an integrated plan for outdoor living space as it is almost as important as indoor living space.

Applicant Richard Bartlett said as part of the process, it has been their intent all along to provide the amenities on the plans for Design Review. With regards to Paragraph B under Section V, which states *"Grading will be limited to road construction and fire vehicle access and to within the building footprint"*, it would not be possible to put the building on the site without doing some grading outside of the building footprint. They would need to do some grading as well for road construction to the fire vehicle access.

Planner Sinnette believed the finding can be made even if that particular phrase was removed. Chair Mitchell suggested the grading matter can be handled at staff level. He asked staff to come up with language to address the outdoor living space element of the plan.

Ms. Sinnette suggested a line item be added under Condition of Approval, Item 4, dictating plans submitted shall include the house design, as well as exterior improvements including but not limited to amenities such as swimming pools, out buildings, fencing, and landscaping. Paragraph B of Section V could be modified to state *"Grading will be limited to road construction and fire vehicle access and to within the vicinity of the building."*

Commissioner Holt moved and Commissioner Curtin-Tinley seconded to adopt Resolution 2008-11, approving HDP39-07, subject to the findings and conditions of approval, as modified.

AYES: Ateljevich, Chastain, Curtin-Tinley, Holt, Humann, and Mitchell
NOES: None
ABSENT: None
ABSTAIN: Lovitt

6. CONTINUED PUBLIC HEARINGS (Estimated start time 7:00 PM)

A. **GP03-04 CITY OF LAFAYETTE (APPLICANT):** Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family. The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.
RZ02-04 CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20. The Planning Commission may also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10.
Project Planner: Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org
Recommendation: Consider the matter, take public testimony, direct staff and continue to the meeting of April 17, 2008. (Estimated time: 45 min*)

Vice Chair Lovitt returned to the dais at 7:12 p.m.

Project Planner Christine Sinnette reported staff has been working on the City-initiated General Plan and zoning amendments for seven properties in the Eastern Deer Hill Road area. The Planning Commission continued the item at their February 21st meeting and directed staff to consider and provide information on area exclusions in average slope calculations, the effect of split zoning on properties, suggestions of LR-5 zoning, more information on the MRP zoning district, and traffic counts for residential and office land uses.

The purpose of tonight's hearing is for the Planning Commission to provide direction to staff on which specific properties within the Eastern Deer Hill area should be included in the General Plan Amendment and the rezoning applications and what the proposed designations should be. Staff has prepared a list of options for potential project descriptions for GP03-04 and RZ02-04 based on the 2003 City Council direction, discussions at public hearings on the General Plan update, review of the OCA and average slope calculations, and comments received from the public and Planning Commission. Staff recommends the Planning Commission select Option 4 and direct staff to proceed with the environmental review. Option 4

eliminates the APO zoning designation, generally relates to the allowed density based on average slope if the properties were subdivided, takes into account regulatory and environmental constraints, and balances the City's desire to retain a semi-rural character of its hillside lands with the needs of private property owners.

Commissioner Humann asked how they would zone the CalTrans property LR-10 if it is not a 10-acre parcel. Ms. Sinnette responded it would be considered non-conforming.

Commissioner Humann asked how that would work with respect to entitlements. Ms. Sinnette responded they would still only be able to have one unit.

Chair Mitchell asked if it would be appropriate to zone parcels 4, 10, and 14 LR-10 for the sake of consistency, as all three parcels were limited to one dwelling unit each, based on slope density and other factors. It would create a blanket of LR zones and would appear less like spot zoning.

Ms. Sinnette did not think spot zoning was really an issue. The split zoning would manage a property owner's expectations on what could be done on the property in the long run. There is not a downside going towards that type of zoning. A greater zoning more in conformance with the potential density would be appropriate as well.

Chair Mitchell opened the public meeting for comments.

Martin Lysons, Project Attorney for Anna Maria Dettmer, thanked the Planning Commission and staff for the progress made so far. He appreciates consideration of alternatives such as LR-5 for some of the properties and the MRP zoning for Parcels 27 and 28. It is however their opinion the MRO zoning would be more appropriate since it would not restrict the two parcels to single-story developments and would allow for greater density. There are no constraints that would warrant height reductions to one-story. There are no view shed considerations that need to be protected. Multi-family density and height restrictions should be analyzed in conjunction with a specific application presented. The MRO will allow the City flexibility to look at various types of development. They are opposed to the down zoning of Parcel 27, the Christmas tree lot. The view shed analysis of the shelf portion can be done as part of a specific project development application and can easily be protected under a mixed use zoning such as MRO or MRP, or with the existing APO. He questioned whether the City has sufficient parcels to meet the housing unit numbers required by the State's affordable housing law.

Michael Henn asked if notice of tonight's hearing was forwarded to the current property owner of the recently sold Holding property. Ms. Sinnette clarified Mr. Holding is still the owner as title will not be transferred until May.

Mr. Henn did not believe a split zoning is appropriate for their properties because the area in LR is greater than 10 acres - parcel 10 is 17 acres; parcel 16 is 37 acres. The analysis in the staff report does not apply to their situation. The R-20 portion, subject to the Hillside Ridgeline regulations could create R-20 lots and the area in the LR would be 10 acre parcels, which is not discussed in the analysis. As emphasized in his March 13th letter, it would be premature for the City to downzone any of the properties in town that could provide affordable housing, given the current lack of sites that meet the new State housing standards. The City will find that encroaching into established single family residential areas would be much more controversial than it would be to take advantage of an area that already has multiple zonings on it.

David VanEtten strongly supports keeping the LR-10 zoning on all of the properties. The City needs to uphold the standard of keeping everything north of the freeway residential. The GPAC unanimously supported the LR-10 zoning for all seven parcels. The MRP designation for multi-family and office use will generate more traffic. Any project proposed in the area should be carefully planned as it is an entry way into the City of Lafayette.

Guy Atwood said the City Council's direction to the Planning Commission was to zone the APO parcels to single family residential. Multi-family and office use was not discussed. It would be illogical to go from APO to MRO or MRP. The General Plan states both the freeway and Deer Hill Road serve as dividing lines between Downtown to the south and the semi-rural single residential neighborhoods to the north. The development allowed under current zoning along the Deer Hill corridor must be consistent with the

Lafayette semi-rural community identity. He supports the LR-10 zoning. The LR-5 might fit a particular parcel such as the Holding property. The APO zones really should all be rezoned to single family residential.

Cliff Tong does not have as much of an objection to commercial use as he does to the potential impacts on traffic. Table 4 shows a magnitude of 10 to 14 times the traffic based on the comparison under LR-10 for two homes versus potentially a significantly larger project like a day-care center. Less intensive uses is in the order of 2 to 6 times greater the traffic. This will have a significant impact to an artery that is already clogged. He would recommend sticking with LR-10.

With no other speakers, Chair Mitchell closed the public portion of the meeting. He informed the applicant there is no rebuttal period as the City is the applicant.

Commissioner Curtin-Tinley asked what the difference is between MRP and MRO. Ms. Sinnette explained the MRP allows for one-story; the land uses are all the same.

Commissioner Curtin-Tinley asked if there would be a non-conforming use for Parcel 21 based on staff's recommendation under Option 4. Ms. Sinnette said no because there is only one house. The recreational facility has a use permit and is allowed under LR-5. The LR-5 would conform to the actual density and allow for 4 dwelling units based on the 20 acres.

Commissioner Ateljevich asked how staff arrived at four lots for the parcel. Ms. Sinnette reported she did not take it beyond the simple slope analysis.

Commissioner Holt asked why staff was recommending LR-10 for Parcel 14, the one-and-a-half acre CalTrans property. Ms. Sinnette said the suggestion was made by the Planning Commission at their last meeting.

Commissioner Holt said it made no sense. Ms. Sinnette said the rationale behind it was if they were going to try to cluster zoning designations together, they should re-zone the piece down below to LR-10 if they are looking to rezone the upper portion of 27.

Chair Mitchell asked if the item would only go to the City Council if appealed, or if it would go to them after the Planning Commission reviewed the environment impact review. Ms. Sinnette said the recommendation is for the Commission to determine the project description for the GPA and rezone and then contract with a consultant to prepare the environmental review. But given the number of opinions received on the matter and the passage of so much time, it might be beneficial to forward it to the City Council as an advisory item, once the project description is determined. If the Council cannot support it, the City would not have to spend the money on an environmental review. If the Council doesn't see the project moving in the direction anticipated or expected, it can come back to the Planning Commission for another review.

Chair Mitchell asked if staff knew the level of service at Pleasant Hill and Deer Hill. Planning and Building Services Manager Niroop Srivatsa reported the EIR for the General Plan studied the range of development options for the parcel. An alternative with 50 multi-family dwelling units was studied for Parcel 27. LOS does not apply to Pleasant Hill Road if you take out the CCTA method of analysis because the road is a route of regional significance and therefore not required to meet the A to F standards. All it has to do is meet the objectives of the Pleasant Hill Road action plan.

Chair Mitchell said he would like to get consensus on parcels 4, 10, and 14 and address parcels 27 and 28 at the end. Commissioner Ateljevich did not think they can look at 4, without considering parcel 16.

Commissioner Holt did not think Parcel 14 should be rezoned to LR-10 since it would not be appropriate as a residential unit. He does not see a down side in leaving it as an APO. Chair Mitchell thought the property would be more valuable if it were acquired by Parcel 27 since it is a long skinny parcel right along Pleasant Hill.

As a matter of practicability, Commissioner Ateljevich said the odd size of parcels 4 and 14 belong with parcel 16 for general plan mapping and zoning purposes. LR-10 is very suitable for Parcel 10. The density

of one house would be dictated by the Hillside Ordinance. She would agree to a LR-10 zoning for Parcels 14 and 16.

Chair Mitchell asked if there is a legal problem with the LR-10 zoning for Parcel 4 since is it only half an acre. Ms. Sinnette said it would be rendered non-conforming. It will not present any legal problems.

Commissioner Curtin-Tinley asked if it was currently non-conforming. Ms. Sinnette reported Parcel 4 is zoned R-20 and is in conformance.

Commissioner Ateljevich disagreed. Ms. Sinnette explained the General Plan follows the R-20. Parcel 4 is conforming since it has one dwelling unit on a half acre, zoned R-20.

Ms. Sinnette said rezoning Parcel 4 to LR10 would make it non-confirming, which would then require 50 foot setbacks which could severely constrain the ability for anyone to do any addition. The applicant would have to apply for a variance.

Chair Mitchell thought Mr. Atwood was referring to the General Plan when he pointed out the area above the freeway was considered residential. Commissioner Ateljevich thought that was true for everything north of the freeway.

Ms. Sinnette said there was another statement which specifically relates to Deer Hill Road. Under Goal LU-13, which talks about the eastern Deer Hill Road, near the intersection of Pleasant Hill Road where developed – Policy 13.1 preserves and enhances the semi-rural single family residential character north of Deer Hill Road, where not adjacent to Pleasant Hill Road. It does exclude that which is adjacent to Pleasant Hill Road. The policy after that states consider options for development south of Deer Hill Road and north of Deer Hill Road where adjacent to Pleasant Hill Road, which are parcels 27 and 28. If the Planning Commission wants to consider something other than single family residential, it would not be in conflict with the General Plan.

Vice Chair Lovitt thought that was the case. It goes on to say protect and enhance the rural character, not semi-rural, but rural character of the area north of Deer Hill, but not adjacent to Pleasant Hill Road. It goes on further to say utilize the property south of Deer Hill Road to help communicate the image of Lafayette to the semi-rural community. In his opinion, preserving the portion of the property north of Deer Hill Road in its rural environment and putting that next to something that is multi-family on the other side of the road is not consistent with the General Plan.

Chair Mitchell asked again if there was consensus on parcels 4, 10, 14 and 16.

Vice Chair Lovitt supports LR-10 for those parcels. Commissioner Ateljevich concurred.

Commissioner Curtin-Tinley shared Commissioner Holt's concern regarding parcel 14. A residential use would not be appropriate so close to the freeway. She does not support changing parcel 4 from R-20, now a conforming use to LR-10, a non-conforming use. She agrees with staff's recommendations for parcels 4, 10, and 16; she does not agree with the recommendation for parcel 14.

Commissioners Humann and Holt concurred with Commissioner Curtin-Tinley.

Commissioner Chastain agreed parcels 10 and 16 should be LR-10. He would go along with staff's recommendation on parcel 4. He is going to withhold his comments on parcel 14 since it is a sliver of property that could be considered as an adjacent issue with parcel 27.

Chair Mitchell asked for a straw vote for each of the parcels since there was separation in some areas and consensus on others.

LR-10 Zoning for Parcels 10 and 16:

Ayes: Ateljevich, Chastain, Lovitt, Mitchell
Noes: Curtin-Tinley, Holt, and Humann

R-20 zoning for Parcel 4:

Ayes: Chastain, Curtin-Tinley, Holt, and Humann
Noes: Ateljevich, Lovitt, and Mitchell

Chair Mitchell asked for a raise of hands for parcel 14. Commissioner Chastain stated he was abstaining until they talk about the area south of that.

Chair Mitchell asked for a raise of hands for parcel 21. He noted Commissioner Ateljevich had made an argument for LR-10 on the whole property based on the constraints analysis, which would provide two possible dwelling units.

Commissioner Holt favored staff's position for LR-5 for that parcel. Vice Chair Lovitt thought the constraints would dictate it to be LR-10. Commissioner Chastain felt LR-10 would be the appropriate zoning based on the constraints.

Based on the slope density calculations, Ms. Sinnette said she had recommended LR-5 because it would yield four dwelling units. She did not look at the property in light of all of the constraints in the study done a couple of years ago. If the Commissioners believe that it can't get more than two lots there, the LR-10 is probably appropriate. It would be up to a future developer to prove that they can get more. Given the fact that it is almost 80% constrained by the Class 1 ridgeline setback, that in itself could be pretty problematic.

Chair Mitchell asked for a straw vote for parcel 21.

LR-5 Zoning for Parcel 21:

Curtin-Tinley, Holt, and Humann

LR-10 Zoning for Parcel 21:

Ateljevich, Chastain, Lovitt, and Mitchell

Chair Mitchell asked for consensus to put parcels 14 and 27 together.

Commissioner Holt did not think it was rational or logical to assume the two parcels will merge into one ownership even though they are both clearly south of Pleasant Hill Road. Parcel 14 would not be appropriate for a house.

Commissioner Humann asked if each parcel should be considered on its own merit. Ms. Sinnette confirmed each one should be considered as a discreet property. Commissioner Humann interjected they cannot assume properties will merge with other properties.

Commissioner Ateljevich said putting a dab of commercial right there on the freeway would go against everything in the General Plan that speaks to the area being highly visible and should be symbolic of the semi-rural spirit that mark the area as a view point of hills and natural settings.

Commissioner Holt did not think a small office building would be any different than a small house.

Vice Chair Lovitt agreed with Commissioner Ateljevich. Parcel 14 is critical and should be viewed as one area. Combining it with parcel 21 would be the smart thing to do.

Chair Mitchell asked if they could get a straw vote on 27 to see if people are in favor of a split zoning.

Commissioner Ateljevich is ambivalent. On the one hand, the direction given by the City Council is to zone it single-family residential. She does not think the Council would accept the MRP zoning. The homeowners would oppose it. They could pose two different alternatives to the Council and let them make the decision; one concept would be putting MRP on a portion of 27 and 28; and an alternate plan would be all single family residential as the Council had requested.

Planning and Building Services Manager Niroop Srivatsa suggested the item be tabled as the two other items on the agenda would have to be handled this evening before the power is shut off at 9:00 p.m.

Chair Mitchell informed the applicant since they only have 45 minutes left, there may be a chance the item will be continued to a future meeting. He asked for staff's presentation on Item 7A.

Commissioner Holt moved and Commissioner Chastain seconded to continue the item to April 17, 2008 to address zoning for parcels 14, 27 and 28.

AYES: Ateljevich, Chastain, Curtin-Tinley, Holt, Humann, Lovitt, and Mitchell
NOES: None
ABSENT: None
ABSTAIN: None

7. NEW PUBLIC HEARINGS (Estimated start time 7:45 PM)

A. RZ02-94CC WARD-YOUNG ARCHITECTS (APPLICANT), BRUCE WHITTEN (OWNER), HPD: Request for change of conditions to a previous approval for a rezoning from LR-5 to HPD to modify the approved final hillside planned development for construction of a 745 sq. ft. accessory structure, located at Buckingham Estates Subdivision, 13 Sessions Road, APN 232-040-023.
Project Planner: Glenda Warmoth, Tel (925)299-3257, gwarmoth@ci.lafayette.ca.us
Recommendation: Consider the matter, take public testimony and adopt resolution 2008-12 approving RZ02-94CC with conditions.
(Estimated time: 30 min*)

Project Planner Glenda Warmoth reported the item is a request for a change of conditions for construction of a new structure on an existing lot of record located at 13 Sessions Road. The parcel is located within the Hillside Overlay District and within 100 feet of the Class II ridgeline. The Design Review Commission considered the project on March 11th and recommended approval to the Planning Commission with two modifications. The applicant is to extend the porch area by three feet towards the southern property line, which would require the removal of one 18-inch oak tree. Subdivision Condition of Approval No. 14, related to the proposed landscaping has been altered to allow for three substantially sized shrubs 15- gallons or greater, in the area between the edge of Sessions Road and the edge of the vehicular driveway that access the site.

Commissioner Ateljevich said because the plan is no longer to scale, it is hard tell what the distance is between the three shrubs. She is concerned they would look very spotty. She thought Commissioner Cleaver had suggested replacing some of the more desprative planting with sufficient shrubs to screen the PG&E and Pac Bell installations. The Toyons proposed would have an 8-feet wide canopy at best upon maturity growth and would not address their concerns.

Chair Mitchell asked the applicant for his response and disclosed they have played basketball together in the past.

Mason ?, with Ward-Young Architects said the plans are pretty self explanatory in relation to the landscaping. Design Review did not have any concerns with siting, as there was really only one place to put it.

Commissioner Ateljevich reiterated she did not think the Toyons were going to provide the coverage they had talked about. She would suggest they approve the application subject to the review of the landscape plan by Commissioner Cleaver.

RECEIVED
MAR 26 2008
CITY OF LAFAYETTE
PLANNING DEPT.

Oral Presentation for March 20, 2008 Planning Commission Hearing:

I. Thank commission for considering alternative zoning for the Dettmer Properties. Appreciate willingness to explore LR-5 zoning on the Deer Hill Road properties and mixed-use zoning on the properties at the Deer Hill Road/Pleasant Hill Road intersection.

II. Appreciate the consideration of MRP zoning (as opposed to R-20), but MRO is more appropriate.

A. Basic differences are density and building heights.

B. MRO allows two-story buildings. There is no constraint on the property that would limit the heights of buildings at street level on the two properties. No danger of peaking over the ridge. No viewshed issues. Limiting parcels 27 & 28 to one story MRO would be inappropriate.

C. Multi-family density for MRO can be as high as 35 units per acre, as opposed to 17 for MRP. Maybe the sites are constrained too much to allow the highest MRO density (or maybe not), but this should be determined based on a more detailed project-level analysis. Such an analysis would be done under cover of a development application, which would be subject to review by this Commission.

III. We remain opposed to downzoning on the upper portion of the Christmas Tree lot.

A. There is no justification for downzoning. The "shelf" can easily hide development from view, and further screening can be provided by landscaping. In any event, a viewshed analysis will be a part of any subsequent development application. The City can make a determination on views, etc., based on the actual application, rather than now, in a vacuum.

B. The Class I ridgeline does not extend as far in reality as it does on the map in the staff report. When you look at it in the field, the top of the ridge does not cross Deer Hill Road. While this does not mean that the parcel is not limited by the ridgeline at all, the limitations are not as severe as shown in the Constraints Analysis. Again, this can be explored in detail under a specific application, not now, in a vacuum.

C. MRO or even MRP (if it can be shown that a two-story development can be screened from down below) would be more appropriate, because those zoning categories do not limit allowable uses arbitrarily.

D. Downzoning is still too severe from a fundamental fairness standpoint.\

IV. State Affordable Housing Law

A. As I pointed out in my last letter, City can't downzone this property without a finding that the affordable housing needs can be met elsewhere within City Limits.

B. This finding has not been made.

C. This finding cannot be made, because even if all the properties listed on General Plan Table 31 could be developed as advertised listed, it would not provide for the ABAG requirement of 190 low/very low income units, or even 80 moderate units.

1 In high-cost areas such as Contra Costa County, builders can only provide about 15% of a project's units at the Low and Very Low income levels, unless these units are subsidized, because the required low rent levels would not make the units feasible.

2 Consequently, a significantly greater amount of land must be zoned for high density than just the minimum amount needed to contain the actual Low and Very Low number of units assigned to that city by ABAG.

3. The City needs a significant number of market-rate units in order to subsidize the construction of the very low/low/moderate income units. Usually need to build no more than 15% in these categories to make your development pencil out.

4. Without the upper portion of the Christmas Tree lot, there is no chance under current conditions of making the ABAG requirement.

V. We appreciate consideration of LR-5. We would like the opportunity to evaluate further, perhaps under CEQA, which we maintain will still be required before any General Plan Amendment/rezoning can take place.

VI. Conclusion. There are still a lot of decisions that are being made in a vacuum. Restrictions on building heights, visibility and even density are better determined when a project is actually proposed. Otherwise, the only way to analyze the potential uses thoroughly is to adopt a Specific Plan.

Item 6A

City of Lafayette Staff Report

For: Planning Commission

By: Christine Sinnette, Senior Planner

Date Written: April 9, 2008

Meeting Date: April 17, 2008

Subject: GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family~~. The Planning Commission may also consider an amendment to General Plan Map I-1~~ and to reclassify ~~four~~ three properties (APN ~~232-140-004,~~ 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road ~~and Pleasant Hill roads~~ from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20~~. The Planning Commission may also consider rezoning four~~ and rezone three properties (APN ~~232-140-004,~~ 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road ~~and Pleasant Hill roads~~ from R-20 to L-R-10.

EXECUTIVE SUMMARY

Planning Division staff have been working on City-initiated General Plan and zoning amendments (GP03-04 and RZ02-04) for seven properties in the Eastern Deer Hill Road area (see Attachment 1 – Parcels and Ownership). At the March 20, 2008 meeting, the Planning Commission discussed possible zoning designations for parcels 4, 10, 6 and 21 and continued discussion on parcels 14, 27, and 28 to the meeting of April 17. The purpose of this meeting is to decide on General Plan and zoning designations for the remaining three properties. Staff recommends that the Planning Commission select Option 3 and direct staff to proceed with the environmental review for GPA03-04 and RZ02-04.

STAFF COMMENTS AND ANALYSIS

At their meeting on March 20, the Planning Commission decided on the proposed zoning and General Plan designations for four of the seven properties. Table 1 lists the four properties and the proposed designations.

Table 1
Proposed General Plan and Zoning Designations

Properties	Property Owner	Current General Plan	Current Zoning	Proposed General Plan	Proposed Zoning
Parcel 4	Naglicki	Low Density Single Family Residential	R-20	No Change	No Change
Parcel 10	AMD Trust (Dettmer)	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10	Rural Residential Single Family	LR-10
Parcel 16	AMD Trust (Dettmer)	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10	Rural Residential Single Family	LR-10
Parcel 21	Holding	Low Density Single Family Residential and Rural Residential Single Family	Split R-20 & LR-10	Rural Residential Single Family	LR-10

The remaining three properties are listed in Table 2.

Table 2
Eastern Deer Hill Road Properties

Properties	Property Size	Property Owner	Current General Plan	Current Zoning
Parcel 14	1.36 acres	State of California	Administrative/Professional/ Office/Multifamily Residential	APO
Parcel 27	22.26 acres	AMD Trust (Dettmer)	Administrative/Professional/ Office/Multifamily Residential	APO
Parcel 28	1.91 acres	AMD Trust (Dettmer)	Administrative/Professional/ Office/Multifamily Residential	APO

Based on average slope calculations prepared by Schell & Martin, Inc. and application of the lot area and density table in section 6-2043, staff has prepared Table 3.

Table 3
Dwelling Unit Yield Based on Slope and Lot Area

Property Number	14	27	28
Property Size	1.36 ac.	22.26 ac.	1.91 ac.
Current Zoning	APO	APO	APO
Average Slope of Total Lot	30.9%	24.3%	26.7%
Maximum Allowed Density per §6-2043	.48 du[1]	14.0 du[2]	.95 du[2]

Parcel 14 consists of a narrow, southward sloping site overlooking Highway 24. If the property were zoned residential, it would be subject to Chapter 6-20. Based on the average slope of 30.9 percent, only one dwelling unit could be allowed on this property. Parcel 14 is not located within a ridgeline setback area.

Parcel 28 is a 1.91-acre site located adjacent to Pleasant Hill Road. It is relatively level adjacent to the roadway then slopes steeply to the west. If the property were zoned residential, it would be subject to Chapter 6-20. Based on the average slope of 26.7 percent, only one dwelling unit could be allowed on this property. This parcel is entirely within a Class I ridgeline setback. See Attachment 2 – Ridgeline Delineation and Development Setback.

Parcel 27 is physically divided by a drainage channel and topography into a 20.49± acre "upper" portion and a 1.76± acre "lower" portion adjacent to Pleasant Hill Road. It is the most visible of the seven properties and about one-third of the upper portion is located within a Class I ridgeline setback. If zoned residential it would be subject to Chapter 6-20. Based on the average slope of 24.3 percent, fourteen dwelling units could be allowed on the entire property.

Although parcels 14, 27, and 28 are located in the hillside overlay district, these properties would not be subject to the hillside development regulations of Chapter 6-20 because they are not residential lots. As stated in section 6-2013, LMC, application of the hillside overlay district, "The regulations of this article [Hillside Overlay District] apply in the hillside overlay district to (1) a residential lot existing on July 8, 2002, (2) a division of land into two or more lots and, (3) to the extent provided in chapter 6-24, to a lot line adjustment approved after July 8, 2002." As currently zoned, they would only be subject to Chapter 6-20 if the properties were to be subdivided. These properties should be rezoned to a residential zoning designation consistent with their location in the hillside overlay district.

[1] Only applicable if property is subject to Chapter 6-20.

Staff has prepared a list of General Plan amendment and zoning options for the remaining three properties.

Option 1 – Current Project Description

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
14	California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
27	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
28	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Low Density Single Family	APO	R-20

Option 2 – Alternative 4, 2002 General Plan

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
14	California	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
27	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10
28	Dettmer	Administrative/Professional/ Office/Multifamily Residential	Rural Residential Single Family	APO	LR-10

Option 3

Parcel	Property Owner	Current General Plan	Proposed General Plan	Current Zoning	Proposed Zoning
14	California	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	R-20
27 (west of drainage)	Dettmer	Administrative/Professional/ Office/ Multifamily Residential	Rural Residential Single Family	APO	LR-10
27 (east of Drainage)			Low Density Multi-Family Residential: Up to 17 du/acre		MRP or MRT
28	Dettmer	Administrative/Professional/ Office/ Multifamily Residential	Low Density Multi-Family Residential: Up to 17 du/acre	APO	MRP or MRT

At the last meeting, the Commission considered the appropriateness of the MRP zoning district for parcels 27 and 28. The MRP zoning district (multiple-family residential/professional office, one-story) is classified in the zoning ordinance as a residential land use district. Some of the Commissioners and public expressed concerns about the office and commercial uses that could be allowed under MRP because of the apparent conflict with City Council direction, General Plan policies and traffic generation. To provide background on the City Council direction, Attachment 3 contains the minutes of the Council meeting of August 11, 2003 when they directed staff to initiate the General Plan and zoning amendment. Attachment 4 is an excerpt from the General Plan identifying the goals and policies for the Deer Hill area.

Given the concern over the mixed use aspects of the MRP zoning, the Planning Commission may want to consider the MRT (Multiple-family Residential Townhouse District) zoning designation. The purpose of the MRT district is to provide a medium-density residential district for townhouse development, which will be consistent with and further the city's overall planning objective of the preservations and enhancement of its semirural residential character. The zoning ordinance defines "townhouse" as an attached or detached family unit with air space or air space and yard space for each individual unit. Townhouse ownership may include ownership of common grounds or facilities. The only uses other than residential which could be allowed in the MRT zone are eleemosynary and philanthropic institutions, convalescent homes and boarding homes. These uses would require a use permit. The corresponding General Plan designation for MRT would be Low Density Multi-family Residential: up to 17 dwelling units per acre. See Attachment 5 for more information on the MRT district as well as the MRP, LR, R-20 and APO zoning districts.

The Commission has also been considering the LR-10 district for parcels 14, 27, and 28. As can be seen in Attachment 6, applying the 50-foot property line setbacks to Parcel 28 eliminates more than one-half of the flatter, developable area. Staff had planned to provide a similar exhibit for Parcel 14 but decided it was unnecessary. Parcel 14 is only 130 feet at its widest and once the 50-foot setbacks were laid out, only a 1,200 square foot area remained. Staff is recommended that the zoning on this property be changed to R-20 consistent with Parcel 4 to the north and the residential neighborhoods to the west. It is staff's opinion that Parcel 28 and the lower part of Parcel 27 adjacent to Pleasant Hill Road would be more suitable for low intensity office uses or low density multi-family rather than single family homes. Single family homes would not be suitable along this portion of Pleasant Hill Road because of the noise and traffic. A designation of MRT would provide for a housing type not largely provided in Lafayette and provide a transition zone between the Highway 24 and the commercial areas to the south and the single-family neighborhoods to the north.

Staff recommends that the Planning Commission select Option 3. Option 3 eliminates the APO zoning designation and takes into account regulatory and environmental constraints such as property line setbacks, ridgeline setbacks, slope, and riparian habitat, and balances the City's desire to retain the semi-rural character of its hillside lands with the needs of private property owners.

PUBLIC NOTICE AND COMMENT

The public hearing on these applications was continued from the meeting of March 20 and no new public notification is required.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission select Option 3 and direct staff to proceed with the environmental review for GPA03-04 and RZ02-04.

ATTACHMENTS

1 Eastern Deer Hill Road Parcels and Ownership *(not included)*
2. Ridgeline Delineation and Development Setback *(not included)*
3. City Council Meeting Minutes of August 11, 2003 *(not included)*
4. Excerpt from the Land Use Chapter of the Lafayette General Plan
5. Zoning District Excerpts – MRT, MRP, LR, R-20, APO
6. Application of LR Setbacks

Excerpt from Land Use Chapter of the Lafayette General Plan

Goal LU-13: **Ensure that the Eastern Deer Hill Road area near the intersection of Pleasant Hill Road is developed, where development is appropriate, in a manner consistent with Lafayette's community identity.**

Policy LU-13.1 Preserve and enhance the semi rural single-family residential character north of Deer Hill Road where not adjacent to Pleasant Hill Road.

Policy LU-13.2 Consider options for development south of Deer Hill Road and north of Deer Hill Road where adjacent to Pleasant Hill Road.

Program LU-13.2.2: Prepare through a community planning process an Eastern Deer Hill Road Specific Plan that includes the following requirements:

a) Protect and enhance the rural character of the area north of Deer Hill Road where not adjacent to Pleasant Hill Road.

b) Preserve prominent views.

c) Include development standards that maintain the semi-rural character of the area and the community.

d) Utilize the property south of Deer Hill Road to help communicate the image of Lafayette as a semi-rural community.

Remainder of Deer Hill Road Corridor (from Elizabeth Street west to Happy Valley Road)

Due to the proximity to the Downtown and the BART station, this section of Deer Hill Road and the single-family neighborhood that lies north of Deer Hill Road are constantly faced with development pressures to utilize the infill areas more intensively than currently planned or zoned. It is specific intent of the community to restrict commercial and multifamily uses to the south side of the freeway, which in this area is the terminus of the Downtown to the south, in order to protect the single-family residential neighborhoods that lie north of the freeway.

Goal LU 14: **Protect the single-family residential neighborhoods north of Hwy 24 from commercial and multi family development.**

Policy LU-14.1 Continue to maintain the freeway as the dividing line separating the Downtown from the semi rural, single-family residential areas to the north.

Program LU-14.1.1 Consistent with the community's identity, allow only those uses on Deer Hill Road that are permitted by right, or with a use permit, in the single-family residential zoning districts.

ATTACHMENT 4

Planning Services Division
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549-1968
Tel. (925) 284-1976 • Fax (925) 284-1122
http://www.ci.lafayette.ca.us

MRT

Multiple-family Residential Townhouse District

6-881	General.
6-882	Purpose.
6-883	Uses permitted.
6-884	Uses requiring a permit.
6-885	Density.
6-886	Height.
6-887	Property development standards.
6-888	Open space.
6-889	Design review.
6-890	Parking.
6-891	Site plan and building elevation approval.
6-892	Modifiable sections.

NOTE: The City has other regulations, which may affect individual properties, including, but not limited to hillside development, structures over 17-ft. in height, development in excess of 6,000 sq. ft., tree protection, grading, and public art. Please review the Project Checklist available on the City of Lafayette web site at www.lovelafayette.org for an overview of regulations that might apply. You may consult Planning Services Division staff to ascertain which rules and regulations apply to any given project.

ATTACHMENT 5

Multiple-family Residential Townhouse District

6-881 General.

All land in the multiple-family residential townhouse district (map symbol M-R-T) shall be used in accordance with the provisions of this article. (Ord. 129 § 2 (part), 1974)

6-882 Purpose.

The purpose of this article is to provide a medium-density residential district for townhouse development, which will be consistent with and further the city's overall planning objective of the preservation and enhancement of its semirural residential character. The regulations in this article are intended to require carefully conceived plans at a physical scale compatible with nearby residential areas; to preserve natural settings and open space; to ensure attractive and compatible architectural treatment of structures; to achieve the optimum in quality development, preservation of the environment, enhancement of the tax base, and beneficial use of available land; and to provide for development which is consistent with the goals and policies and other provisions of the general plan. (Ord. 314 § 1 (part), 1984: Ord. 129 § 2 (part), 1974)

6-883 Uses permitted.

The following uses are permitted in the M-R-T district:

(a) Townhouses;

(b) Foster homes or family care homes operated by a public agency, or by a private agency which has obtained state or local approval (license) for the proposed operation, where not more than six minors reside on the premises with not more than two supervisory persons;

(c) Residential care homes for the aged, operated by a public agency, or by a private agency which has obtained state or local approval (license) for the proposed operation, where not more than six aged persons reside on the premises with not more than two supervisory persons;

(d) Home occupations.

(Ord. 129 § 2 (part), 1974)

6-884 Uses requiring a permit.

In the M-R-T district, the following uses are permitted on the issuance of a land use permit:

(a) Residential businesses;

(b) Eleemosynary and philanthropic institutions, convalescent homes and boarding homes;

(c) Uses which the planning commission has found, after notice and hearing, to be comparable to the above uses.

(Ord. 129 § 2 (part), 1974)

6-885 Density.

The maximum number of dwelling units permitted on any lot in the M-R-T district shall conform to the general plan density range for that area. (Ord. 314 § 1 (part), 1984: Ord. 129 § 2 (part), 1974)

6-886 Height.

No building in the M-R-T district may exceed 25 feet in height. (Ord. 129 § 2 (part), 1974)

6-887 Property development standards.

There are no minimum standards for lot area, setback, side and rear yard, and lot coverage in the M-R-T district. This is intended to allow flexibility in design. During the review process, the planning commission may impose such conditions as it deems necessary to assure in any development proposal provision of adequate privacy, general appearance and relationship to the natural and manmade elements of the environment. (Ord. 314 § 1 (part), 1984: Ord. 129 § 2 (part), 1974)

6-888 Open space.

A minimum of 50 percent of the ground level of a lot in the M-R-T district shall not be occupied by buildings, structures or pavement for automobiles, but shall be maintained as open space and devoted to landscaping. Open space includes landscaped open space and ground-level private open space. (Ord. 314 § 1 (part), 1984: Ord. 129 § 2 (part), 1974)

6-889 Design review.

All new construction and all remodeling of a structure when the completed new work will be visible from public property, or when the nature of the use will be changed, shall be subject to the design review requirements and procedures set forth in Part 1 of this title. (Ord. 324 § 2(d) (part), 1984: Ord. 314 § 1 (part), 1984: Ord. 129 § 2 (part), 1974)

6-890 Parking.

(a) In the M-R-T district off-street parking shall be provided on the same lot, convenient to all dwelling units, in accordance with the following schedule:

(1) One-bedroom units, 1.5 spaces per unit;

(2) Two or more bedroom units, 2.0 spaces per unit.

(b) In addition, one guest parking space shall be provided for each five dwelling units. A minimum of one parking space per unit shall be covered.

(c) The provisions of Chapter 6-6 of this title apply to the M-R-T district.

(Ord. 314 § 1 (part), 1984: Ord. 129 § 2 (part), 1974)

6-891 Site plan and building elevation approval.

(a) In the M-R-T district no building shall be constructed or altered or painted a new color in such a manner as to affect exterior appearance, unless plans for such proposal have been approved pursuant to the site plan and building elevations requirements set forth in Part 1 of this title.

(b) Design review of townhouses shall include special emphasis to ensure that building styles and forms, clustering arrangements, heights, materials, colors, street alignments, grading approaches and introduced plantings are designed in a manner which is harmonious and consistent with nearby residential units and which minimizes visual impact from public property.

(Ord. 314 § 1 (part), 1984)

6-892 Modifiable sections.

Land use permits for the special uses enumerated in Section 6-834 and variance permits to modify the provisions of Sections 6-886, 6-888, 6-889 and 6-890 may be granted in accordance with the applicable provisions of Chapter 6-2 of this title. (Ord. 314 § 1 (part), 1984)

6-1013 Off-street parking and loading.

Off-street parking and loading facilities in the APO district shall be provided in accordance with Chapter 6-6 of this title. (Ord. 170 § 2 (part), 1976)

6-1014 Design review.

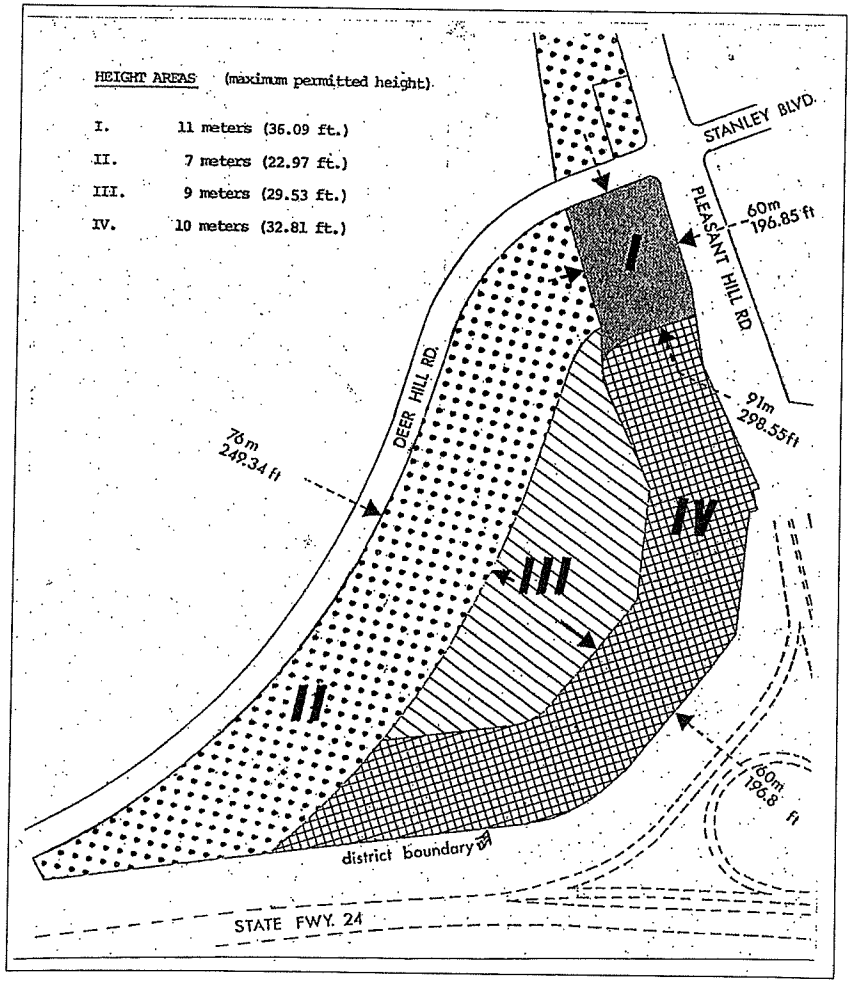
All new construction and all remodeling of a structure when the completed new work will be visible from public property, or when the nature of the use will be changed, shall be subject to the design review requirements and procedures set forth in Part 1 of this title. (Ord. 324 § 2(d) (part), 1984: Ord. 170 § 2 (part), 1976)

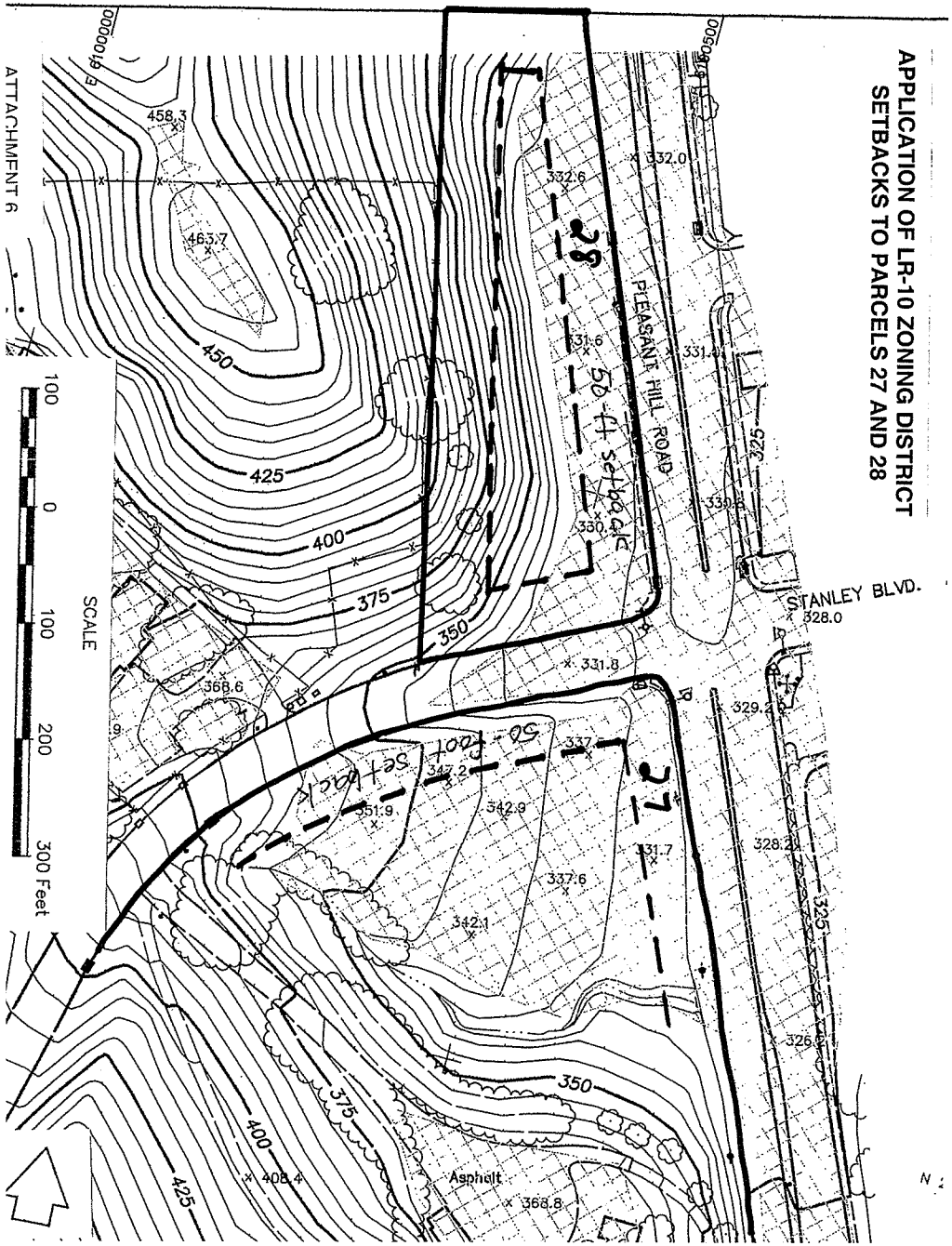
6-1015 Modifiable sections.

Land use permits for the special uses enumerated in Section 6-1004 and variance permits to modify the provisions of Sections 6-1005 through 6-1013, inclusive, may be granted in accordance with the applicable provisions of Chapter 6-1 of this title. (Ord. 170 § 2 (part), 1976)

Figure 6-1006

Administrative/Professional Office District - Height





RECEIVED
APR 17 2008
CITY OF LAFAYETTE
PLANNING DEPT.

Members of the Planning Commission
City of Lafayette

April 14, 2008

I will not be able to attend the Commission meeting tonight, but Chair Mitchell requested that I offer my thoughts on this evening's agenda items. I apologize ahead of time for being brief, but my time is limited today.

GP03-04, City of Lafayette:

My thinking has not changed on parcels 4-21 since the previous meeting, and I fully support the proposal in Table 1 of the staff report.

Concerning parcels 14, 27, and 28, I continue to think that parcel 14 should be considered with 27 in order to cluster zoning recommendations together. Of course, the lead in this process is from the City Council's direction, asking us to remove the APO designation, as well as the protection of Lafayette's identity and the goal of maintaining Hwy 24 as the northern boundary of commercial development as called for in the General Plan.

I also want to respect the rights to develop these parcels and have been open to arguments for a portion of parcel 27 along Pleasant Hill Road as well as parcel 28 to be MRP zoning. The context and configuration of these parcels does not seem particularly good for single-family residences, and, in lieu of a specific plan, I have felt that we should be looking for a designation that made good development sense. Staff's proposal for MRT zoning appears to be that designation in that it offers a way to develop these parcels while maintaining the goals of the General Plan. I also appreciate that it would allow for more potential housing units and offer more diversity in housing type.

Given this, I, without the benefit of hearing it discussed tonight, support the recommendation outlined in Option 3 of the staff report.

GP01-05/RZ01-05 Lafayette Properties:

As before, I support a General Plan Amendment needed for this development. I have always felt that as a transitional area, this site could be developed with greater density. I have also voiced support for the type of housing being proposed as a needed alternative within our community. At the last Planning Commission review of this project, it was noted that the applicant had substantially conformed to the City Council's request for reducing the size, mass, and extent of grading. I attended the DRC meeting where this project was reviewed, and I impressed upon the DRC Commissioners the importance of being rigorous and absolutely clear in their review of this project. I also

asked for a good accounting of the design recommendations and their inclusion into the project. From what I see, the applicant has responded to the issues identified by the DRC, and the project has been forwarded to us with the DRC's approval. The design is more uniform now, possibly resulting from the fewer units as well as the desire to make the building recede. I have also previously stated that part of the building's expression as a mass stems from the approach of extruding the plan up from a garage platform, resulting in a singular building expression as opposed to a multiple building site development. Given that it has emerged from the DRC process in a positive fashion and due to my stated position on its density and housing type, I have a problem not supporting this project and would vote to approve the staff report's recommendations.

HDP39-07 Bartlett:

At the last meeting I was supportive of the house placement, in part, because of the number changes that had been done in order to accommodate our concerns for making findings relative to the hillside ordinance. I was also convinced by the visual presentation and the claim that only 4' of the west wing could be seen above the ridge line. The inclusion of that language came from the claims by the applicant in his presentation. I now see the problem caused by the precise implementation of this condition, and so I would vote to grant the reconsideration, but with the idea that the scope of any reconsideration is not limited and that further claims of visibility will, for the benefit of all, need to be clearly demonstrated.

Respectfully,
Tom Chastain

GagenMcCoy

William E. Gagen, Jr.
Gregory L. McCoy
Patrick J. McMahon
Charles A. Koss
Michael J. Markowitz
Richard C. Raines
Barbara Duval Jewell
Robert M. Fanucci
Allan C. Moore
Stephen T. Buehl
Amanda Bevins
Martin Lysons
Katherine S. Zelazny
Lauren E. Dodge
Anna Claveria Brannan
Sarah S. Nix
Ross Pytlik
Brian P. Mulry

Of Counsel
Linn K. Coombs

The Law Offices of
Gagen, McCoy, McMahon, Koss Markowitz & Raines
A Professional Corporation

Danville Office
279 Front Street
P.O. Box 218
Danville, California 94526-0218
Telephone: (925) 837-0585
Fax: (925) 838-5985

Napa Valley Office
The Offices At Southbridge
1030 Main Street, Suite 212
St. Helena, California 94574
Telephone: (707) 963-0909
Fax: (707) 963-5527

Please Reply To:
Danville

April 10, 2008

RECEIVED
APR 10 2008
CITY OF LAFAYETTE
PLANNING DEPT.

Via E-Mail *(planningcommission@lovelafayette.org)*

Mark Mitchell
Chair, Planning Commissioner
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Re: GP03-04, RZ02-04, Dettmer Properties, Deer Hill Road

Dear Chair Mitchell and Planning Commissioners:

As you know, our law offices represent Anna Marie Dettmer with regard to her properties in the Eastern Deer Hill Road area in Lafayette (the "Dettmer Properties"). At the last Planning Commission hearing on this matter, the Commission undertook parcel-by-parcel "straw votes" to determine its position on the proper zoning for each parcel. Because of the time constraint, the Commission only conducted straw votes on four of the five parcels that do not have frontages on Pleasant Hill Road (the "Deer Hill Road Properties"). Given the previous discussion regarding either LR-5 or leaving the parcels at their current zoning, the Commission's narrow vote to downzone these parcels to LR-10 was surprising and disappointing. As the straw vote is non-binding, I now ask that the Commission reconsider this interim decision in making its formal motion.

At least one commissioner stated that the only appropriate zoning for the Deer Hill Road Properties was LR-10, due to the site constraints on the properties. If this is actually the case, then downzoning the property is not necessary, because the constraints themselves will limit the density for development. However, without further study, we cannot know whether the LR-10 or LR-5 or the current zoning is more appropriate. When a development application is submitted for one of the Deer Hill Road Properties, the applicant will be required to provide enough information to the City to justify the

proposal. If it is true that the constraints dictate a density that is more consistent with LR-10 zoning, the review process will reveal that fact with certainty. Alternatively, a specific plan can be prepared to perform this analysis properly, consistent with Policy LU-13.2.2 of the General Plan. Either alternative would allow this Commission to review any development application with all necessary information at its disposal.

With regard to the properties that front on Pleasant Hill Road (Parcels 27 and 28), we appreciate the Commission's consideration of MRP zoning for Parcel 28 and the lower portion of Parcel 27. As discussed in my last letter to this Commission, these areas are inappropriate for single-family homes. However, as I testified at the March 20, 2008 Commission hearing, MRO is more appropriate for these parcels.

The basic differences between the MRO and MRP zoning districts are density and building heights. MRO zoning allows for two-story buildings. There is no constraint on either Parcel 27 or Parcel 28 that would dictate a one-story limit along Pleasant Hill Road. Any two-story building would be constructed at street level on the two properties; there would be no danger of a two-story building peaking over the ridge, and no viewshed blockage from any vantage point. Therefore, limiting parcels 27 & 28 to one story development would be unnecessary at this stage.

It should be noted again that any proposed development for these parcels will be subject to the strict scrutiny of this Commission under the City's Municipal Code. If a development application is submitted for these parcels, staff and this Commission can analyze the constraints of this parcel in greater detail to determine at that time whether a one-story structure is more appropriate. Absent a specific development application, this detailed information can also be provided to the Commission as a specific plan study. However, limiting the parcels to one story under MRP zoning in a vacuum denies the City the opportunity to explore (with the parcel owner) all the opportunities for these parcels in detail.

Regarding the upper portion of Parcel 27, we remain opposed to downzoning this portion to LR-10 as proposed in the staff report. There is no justification for downzoning. The "shelf" on Parcel 27 provides an opportunity to develop in an unobtrusive manner on this portion of Parcel 27; sight lines can be avoided, and further screening can be provided by landscaping and berming. A viewshed analysis would be a part of any subsequent development application, subject to the Hillside Development Ordinance and to the review and approval of this Commission. The City can make a determination on views, traffic impacts, hillside development findings, and other considerations based on the actual, detailed application, rather than now, in a vacuum. As downzoning to R-10 is extremely severe from a fundamental fairness standpoint, such an action should not be taken without sufficient detailed information. This is precisely the reason the General Plan called for the preparation of a specific plan for the Eastern Deer Hill Road area.

Finally, as I pointed out at the Planning Commission hearing on March 20, 2008, the City cannot downzone this property without a finding that the affordable housing needs can be met elsewhere within City Limits. The City has not met or even attempted to meet this burden. However, staff has indicated that the General Plan identifies 499 units that can be constructed throughout the City. Assuming that this is true, this still does not provide for the 190 low/very low income units required by ABAG. Furthermore, these previously identified sites are in commercial zones. New State law requires that half of the Low and Very Low units be on sites where multiple housing is the only use allowed.

In high-cost areas such as Contra Costa County, builders can only provide about 15% of a project's units at the Low and Very Low income levels, unless these units are subsidized, because the required low rent levels would not make the units feasible. No such subsidy currently exists, so the City has no way of providing all of the required 190 low/very low income units. The necessary finding cannot be made to downzone this portion of the property to single-family zoning. Again, the better solution would be to consider any development proposal on its own specific merits.

Downzoning such as the one proposed by the City should not be done in a vacuum. Key information is still needed in order to justify the downzoning of any of the Dettmer Properties. If the City is unwilling to implement a specific plan for the Eastern Deer Hill Road area, then the only appropriate way to limit development on these parcels is to examine specific development applications on their merits. If, as the Commission asserts, the constraints of these parcels dictate less intense development, then a detailed analysis of any subsequent development application will reveal any limitations.

Please reconsider the straw vote to downzone the Deer Hill Road properties. In addition, please allow MRO (or APO) zoning on the lower portions of Parcels 27 and 28, and allow MRO or MRP zoning on the upper portion of Parcel 27. Alternatively, we would ask the Commission to consider seriously leaving the parcels in their current zoning and subjecting each parcel to the strict scrutiny of the development application process to determine their individual limitations.

Sincerely,

Martin E. Lysons

MEL:kra
cc: Christine Sinnette
Anna Maria Dettmer

RECEIVED
APR 17 2008
CITY OF LAFAYETTE
PLANNING DEPT.

LAFAYETTE HOMEOWNERS COUNCIL
649 Los Palos Drive
Lafayette, CA 94549

BOARD OF DIRECTORS

Maeve Pessis
Valley View Estates

Joe Garrity
Crescent Moon

Lynn Hiden
At Large

Mary-Jane Wood
St. Mary's Estates

George Burtt
Acalanes Valley

Jack Coulter
At Large

Jim Fitzsimmons
Valley View Estates

Byrne Mathisen
Happy Valley

Jan McHale
Lafayette Valley Estates

Guy Atwood
Springhill Valley

Carol Singer
Silver Springs

Cliff Tong
Burtonvalley.com

Tom Grimes
Silver Dell

Susan Callister
Happy Valley

Marie Blits
Lucas Drive Estates

Ivor Samson
Honorary Board Member

DIRECTORS EMERITUS

Jack Fox

Jim Todhunter

April 14, 2008

Mr. Mark Mitchell, Chairman
Lafayette Planning Commission
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Subject: East End Properties GPA and Re-zoning

Dear Chairman Mitchell and Members of the Planning Commission:

The Lafayette Homeowners Council (LHC) supports the zoning changes as taken by informal vote for the four parcels that you have acted on, to date. The LHC also supports the City Council-directed zoning of single family residential for the remaining three parcels 14, 27, and 28 (the CalTrans, the former Xmas tree lot, and the gas station site). The LHC believes the LR 10 zoning to be appropriate for all three sites.

The LHC supports the LR 10 zoning on these three parcels for the following reasons:

1. It is consistent with the City Council-directed zoning as communicated to the Planning Commission in December 2004 for single family residential zoning;
2. It is consistent with the City's adopted General Plan and with all of its elements (see specific wording below);
3. Specifically, it is consistent with the General Plan Goal LU-13 and Policies LU-13.1 and 13.2, which speak to protecting and preserving the **"rural character north of Deer Hill Road" and the "semi-rural character south of Deer Hill Road"**;
4. It is consistent with the City's adopted Hillside Ordinance;
5. It protects the views from off-site called for in the General Plan and in the City's viewing maps, which seek to protect the key entrances to the city and views from public trails and roadways;
6. It takes into consideration the inadequate and unsafe egress from or ingress to the three properties;
7. It allows other uses under the "uses permitted" section;
8. It is consistent with the vote of the General Plan Advisory Committee, which studied the property over a nine year period;
9. It recognizes the many constraints on the properties, including the Opportunities and Constraints Analysis as prepared by MHA Eenvironmental Consulting, Inc.;

10. It is consistent with the 2008 Lamorinda Action Plan for Pleasant Hill Road, which seeks to discourage additional traffic use on Pleasant Hill Road and to improve the Delay Index, which is currently not being met;
11. It is consistent with the zoning for the Holding property, which is immediately adjacent to the former gas station and Xmas tree sites. Mr. Holding stated at prior meetings that he supported the LR 10 zoning for his property, which was similar to the adjacent sites, and that all three parcels should be treated the same;
12. It is consistent with the existing residential use (the Lagiss home and attendant structures) on parcel 27, the seasonal Xmas tree lot parcel;
13. It is consistent with, and protects, the existing creek and animal habitat on parcel 27, which are under the ultimate jurisdiction of the numerous Federal and State agencies;
14. It is consistent with the uses in the area, which are primarily single family residential, or consistent with single-family residential uses, such as the high school;
15. It is consistent with the State of California designation of Hwy 24 as a Scenic Highway.

Per the parcel 27 split zoning issue, we cannot support a split zoning on parcel 27, which considers multi-family zoning. Multiple-family zoning (apartments, office buildings, etc.) is not semi-rural, scenic, or rural in nature, and it is not consistent with the reasoning stated above.

We respectfully request and would strongly encourage the Commissioners to adopt the LR 10 Zoning for these remaining three parcels for the reasons stated above, and those points raised by other neighborhood groups.

Thank you for your thoughtful attention to these issues and for your dedicated service to our community.

Very truly yours,

Susan Callister
Ivor Samson

Susan Callister, Acting President
Ivor Samson, Member

Cc: Lafayette City Council

April 15, 2008

RECEIVED
APR 17 2008
CITY OF LAFAYETTE
PLANNING DEPT.

Mark Mitchell, Chair
Lafayette Planning Commission
City of Lafayette
Lafayette, CA 94549

Re: East End Properties City initiated GPA and Re-zoning

Dear Chair Mitchell and Members of the Planning Commission:

There are several factual items I would like to point out regarding the rezoning of the remaining three East End parcels, 14, 27 and 28, which are included in the staff report for this City initiated rezoning and General Plan Amendment.

First, I attended the City Council meeting in 2004 where this matter was discussed, as well as all the meetings at the City Council and Planning Commission on this matter. **Never, at any time, during the 2004 City Council meeting was any option discussed other than single family residential**. Council Member Tatzin brought up the idea of a VA project possibly on the most westerly parcel, other than that, the City Council focused only on single-family zones for these seven parcels. Multiple family units, office buildings, etc. were never discussed nor, I believe, contemplated. Unfortunately, the word "single" was left out of the motion, but that was clearly the intent of the City Council. In fact, the main reason for considering anything other than LR for the seven parcels was the far westerly parcel, which I brought up for R-20, and the far easterly parcel where the gas station was located. Regarding this latter parcel, we discussed R-10 and R-20 zoning, as it was obvious only one home could be built on such a narrow lot, and that would require variances.

So, to be very clear, the Council motion intended only **single-family residential**, not multiple family or nonresidential use.

Second, the staff report states that building single-family homes on parcels 27 and 28 along Pleasant Hill and Deer Hill Roads is not "suitable" due to the traffic and the noise. Again, to be clear, there are single family homes all up and down Pleasant Hill and Deer Hill Roads, and many right on the roads. And, there is a home right across the street from parcel 27 and adjacent to parcel 28. And, there is an existing home on parcel 27. The facts do not support such a conclusion and I would strongly disagree that single-family homes should not be built on these parcels, given the amount of such homes already built on these two roadways and in this area. Further, there are a number of homes built adjacent to the freeway in Lafayette, which is even worse than Pleasant Hill and Deer Hill Roads from a traffic and noise standpoint.

Third, the staff states that 14 homes could be built on parcel 27 using the slope ordinance. However, staff fails to mention (although they have done so in the past) that when all the other restrictions on this parcel are taken into account, far fewer additional homes would be allowed (there is one home already on this parcel). If you look at your constraints analysis there is little land remaining to be built upon. And, when you consider the creek that bifurcates the parcel, and all the federal and state requirements and setbacks for such waterways, plus the traffic impacts of the Pleasant Hill Road and Deer Hill Road intersection and the increasing BART traffic, plus the soils conditions on parcel 28, which causes the hillside to slide onto either Deer Hill or Pleasant Hill Road almost every year, plus the requirements of the General Plan, plus a multitude of other constraints, then the number of homes is severely limited, and much less than allowed by the slope ordinance.

Finally, I would argue that given the difficulty in determining the best use for parcels 27 and particularly 28, and given the City Council's clear direction, it would be prudent to zone these parcels with a single-family designation, and allow future applicants to request some other use, as appropriate. This has been done successfully on other parcels within Lafayette.

Thank you for your consideration,

Guy Atwood
Board Member
Springhill Valley Association
3345 Springhill Road
Lafayette CA 94549

GREENBELT ALLIANCE
Open Spaces & Vibrant Places

April 17, 2008

RECEIVED
APR 17 2008
CITY OF LAFAYETTE
PLANNING DEPT.

City of Lafayette
Planning Commission
500 St. Mary's Road
Lafayette, CA 94549

Re: GP03-04, RZ02-04, located on Deer Hill Road and Pleasant Hill Road

Dear Planning Commissioners:

Greenbelt Alliance is a non-profit organization dedicated to protecting the Bay Area's open space and making its cities better place to live. Over the years, we have been a part of helping Contra Costa County deal with growth in a way that keeps its quality of life high.

Greenbelt Alliance has become aware that the City of Lafayette is attempting to downzone one of its best remaining sites for mixed use and multi-family housing. These sites are identified as: GP03-04, RZ02-04, located on Deer Hill Road and Pleasant Hill Road. There are over 80 acres of largely vacant property with full urban services. We believe such a down zoning proposal is contrary to good planning principles and the compact development policies that provide an alternative to traditional sprawl development.

These properties are the type of close-in locations where compact development should be encouraged. This area is ideal for higher density housing, mixed with appropriate commercial uses. It is close to downtown Lafayette, BART, schools and the Highway 24 on and off-ramps. The traffic generated here would have less impact on city streets than would new traffic generated virtually anywhere else in Lafayette.

Greenbelt Alliance has adopted policies and created a Compact Development Team focused on meeting the area's housing needs while preserving the open space that makes the Bay Area such a special place to live, work and enjoy nature. However, the Bay Area is growing. We need to accommodate new growth in a way that protects open space while creating walkable communities. To do that, we need more compact development. Greenbelt Alliance actively encourages developments that provide affordable housing in the Bay Area, including the Lamorinda area. We are pleased that the City of Lafayette worked on an inclusionary housing ordinance, which we believe keeping these properties zoned as Administrative/Professional/Office/Multifamily compliments the City's effort to comply with their affordable housing needs.

Greenbelt Alliance's Compact Development Team endorses residential, mixed-use, and commercial developments that are pedestrian-oriented, near transit, uses land efficiently, and

MAIN OFFICE • 631 Howard Street, Suite 510, San Francisco, CA 94105 • (415) 543-6771 • Fax (415) 543-6781
SOUTH BAY OFFICE • 1922 The Alameda, Suite 213, San Jose, CA 95126 • (408) 983-0856 • Fax (408) 983-1001
EAST BAY OFFICE • 1601 North Main Street, Suite 105, Walnut Creek, CA 94596 • (925) 932-7776 • Fax (925) 932-1970
SONOMA-MARIN OFFICE • 555 5th Street, Suite 300B, Santa Rosa, CA 95401 • (707) 575-3661 • Fax (707) 575-4275
SOLANO-NAPA OFFICE • 725 Texas Street, Fairfield, CA 94533 • (707) 427-2308 • Fax (707) 427-2315
INFO@GREENBELT.ORG • WWW.GREENBELT.ORG

fosters complete neighborhoods. Mixing land uses—like homes, stores, and offices—enables people to shop, commute to work, and run errands without having to use a car. In order to achieve this we need to expand housing opportunities. Providing homes that are affordable to people of all income levels enables workers to live close to jobs and relieves pressure to build on open space. Offering a mix of housing types—such as townhouses, apartments, and condominiums— results in more options for people looking for places to live. Designing development with pedestrians in mind helps to create safe and walkable communities. Maximizing development at close-in sites also minimizes the cost of city services. Encouraging higher densities in new developments takes advantage of existing services and infrastructure.

For these reasons we find that Lafayette's proposed down zoning of these close-in and fully-serviced properties are contrary to the policies of Greenbelt Alliance. Greenbelt Alliance urges the City of Lafayette to keep the properties zoned as Administrative/Professional/Office/Multifamily.

We encourage you to learn more about Greenbelt Alliance's compact development programs. Please feel free to call Marla Wilson, Livable Communities Outreach Coordinator at (415) 543-6771 or by e-mail at mwilson@greenbelt.org. Also please visit our website at www.greenbelt.org.

Sincerely,

Christina Wong
East Bay Field Representative

CC: City of Lafayette City Council Members
Marla Wilson, Greenbelt Alliance
Amanda Brown-Stevens, Greenbelt Alliance
Marti Buxton, Contra Costa Housing Trust
Amie Fishman, East Bay Housing Organization

City of Lafayette
Public Meeting MINUTES
Planning Commission Meeting

Thursday April 17, 2008, 7:00PM
Lafayette Community Center, 500 St. Mary's Road, Manzanita Room

CALL TO ORDER

Chair Mitchell called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Chair Mitchell, Vice Chair Lovitt, Commissioner Humann, Commissioner Curtin-Tinley, Commissioner Ateljevich, Commissioner Holt
Absent: Commissioner Chastain
Staff Present: Christine Sinnette, Senior Planner; Greg Wolff, Senior Planner; Niroop Srivatsa, Planning Services Manager

ADOPTION OF AGENDA

PUBLIC COMMENTS

CONSENT CALENDAR

MINUTES FROM FEBRUARY 21, 2008
Recommendation: Approve

MINUTES FROM MARCH 6, 2008
Recommendation: Approve

MINUTES FROM MARCH 21, 2008
Recommendation: Approve

Chair Mitchell made a correction to the Minutes of March 6, 2008 page 12 line 2 insert the word "not" so it would read "to the extent feasible ....have not been resolved." He also made a revision to March 20, 2008 minutes page 6 line 25 which reads "Chair Mitchell asked for consensus to put parcels 14 and 27 together and parcels 13 and 27 together..." He said he was asking that the parcels be considered at the same time. He noted that on page 7 line 39 and page 8 line 1 of the CEQA document is referred to as underscore question mark; he said that is referring to Mike Mussano.

Commissioner Ateljevich moved to approved consent items 5b and 5c Commissioner Holt seconded the motion which carried (6-0-0).

CONTINUED PUBLIC HEARINGS

GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family~~. The Planning Commission may also consider an amendment to General Plan Map I-1~~ and to reclassify ~~four~~ three properties (APN ~~232-140-004,~~ 232-140-010,, 232-140-016, and 232-150-021) located on Deer Hill Road ~~and Pleasant Hill roads~~ from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20~~. The Planning Commission may also consider rezoning four~~ and rezone three properties (APN

DRAFT

~~232-140-004,~~ 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road ~~and Pleasant Hill roads~~ from R-20 to L-R-10.
Recommendation: Staff recommends that the Planning Commission select Option 3 and direct staff to proceed with the environmental review for GPA03-04 and RZ02-04.
Project Planner: Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org

Christine Sinnette gave a staff report noting that at the March 28 meeting the Planning Commission considered possible zoning designations for parcels 4,10, 16 and 21 and continued discussion on the remaining parcels in the Deer Hill Road area to this meeting. She said the remaining parcels are14, 27, and 28 and while they are in the Hillside Overlay District would not be subject to the regulations of Chapter 6-20 because they are not residential lots. She stated these properties should be rezoned to a residential designation consistent with their location in the Hillside Overlay District. She stated at the meeting the Commission considered the appropriateness of the MRP zoning district for parcels 27 and 28. She noted the MRP zoning district can allow multiple family residential and professional office uses limiting them to a maximum of 20 feet high or one story. She said some of the Commissioners and the public expressed concerns about the office and commercial uses that could be allowed in the MRP and suggested the Commission consider the MRT or Multiple Family Residential Townhouse district for these properties. She said the Commission has also been considering the LR-10 district for these parcels and in the packet there are exhibits that show how the application of the 50-foot property line setbacks for the LR-10 district would affect parcels 27 and 28. She recommended that the Commission select option three for the proposed zoning and General Plan amendments for the remaining parcels. Ms. Sinnette noted that staff is recommending Parcel 14 be rezoned to R-20 which is owned by CalTrans that sits above Highway 24. She said the Commission has previously expressed interest in doing split zoning for the 22-acre parcel at the corner of Pleasant Hill Road, Deer Hill and the Highway with the area west of the drainage, which is the upper portion, zoned LR-10 and the eastern portion which is lower and flat to MRP or MRT. She said staff recommends that parcel 28, the former gas station site across from Acalanes High School, be changed to MRP or MRT.

Commissioner Curtin-Tinley asked staff to explain the difference between MRO and MRP zoning districts.

Ms. Sinnette said that they are the same except the MRO district allows two stories whereas the MRP allows only one story. She said MRT is exclusively residential except for the few quasi public or group housing uses like a convalescent home or a boarding house.

Chair Mitchell asked if the Commission needs to make a motion on which parcels they are considering.

Ms. Sinnette indicated the Commission could take a formal motion on each of the four parcels; however at this meeting all 7 properties will be discussed.

Chair Mitchell opened the public portion of the hearing.

Guy Atwood, 3345 Springhill Rd., spoke on behalf of the Springhill Valley Homeowners Association. He referred to a letter he wrote and reiterated that he thinks residential use is a good use for these parcels. He noted that the General Plan speaks to the entry way areas into Lafayette and preserving the open space by limiting the height of development, not development itself.

Commissioner Ateljevich noted that in an earlier letter to the Commission Mr. Atwood suggested development be prohibited in lots 27 and 28.

Mr. Atwood said that he has been consistent with his recommendations and thinks that lot 28 should be a parking lot, perhaps a park and ride. He said his preference for lot 27 would be for residential not office unless its height was severely restricted.

Commissioner Ateljevich noted that there is a height limit in the MRP zone.

Mr. Atwood indicated he was not aware of that, but considering it is difficult to get cars in and out of that property it should be low density.

Jim Fitzsimmons, 1105 Laurel Drive, spoke on behalf of Valley View Estates Homeowners association and the Lafayette Homeowners Council. He noted that while he would not insist on LR-10 zoning he would like to see

DRAFT

residential on every parcel north of the freeway. He noted that the Association would support the Commission if lot setbacks had to be changed in order to accommodate builders. He wants the lots to be buildable, but would like them to be residential.

Michael Henn, 226 Wildwood Ave., represented the property owner of the parcels subject to the action. He said the City has not identified sufficient grounds to substantially reduce potential development on the subject properties particularly the APO zoned portion. He noted there are 8 acres with less than 15% slope and the slopes are generally stable. He said that the seismic issue is to the west and building codes accommodate for that. He indicated that all site misgivings and traffic concerns will have to be mitigated as a project moves forward. The site, particularly lot 27, allows for development due to topography and can very easily be screened from Pleasant Hill Road or from the freeway. He said the City has not identified any significant hazards or constraints to affect the APO zoned properties. He noted that ABAG has given Lafayette a number of new housing units that need to be built, and that there are no vacant lots downtown that could accommodate those units. He said the City has gone too far already in making decisions as to how each parcel is to be zoned without indicating how the City has complied with CEQA. He said everything from a Mitigated Negative Declaration to an EIR has to be looked at before the Commission makes a determination of the properties in question. Mr. Henn noted that the Lamorinda Action Plan calls for all new Plan amendments within the Lamorinda Community be reviewed by the Lamorinda Program Action Committee, and this has not been addressed by the City. He indicated that compliance with Measure C and Measure J are also required. He said that there are required steps that the City must follow to proceed with the Plan amendment and he has not seen them addressed. He said that it is false to assume that less development produces less traffic, reducing density reduces the ability to pay for traffic improvements.

Martin Lysons, representing the property owner and trust, said he submitted a letter which has been included in the packet. He said in the letter he asked the Commission to reconsider the straw vote it took at the last hearing based on the fact that the LR-5 zoning is an acceptable compromise. He said the City has not looked at other opportunities that might be available such as clustering or providing precise dividing lines between zoning districts. He said there has been no study done on traffic. He said there have been no consideration of landscaping or berming opportunities that may screen development on the properties. He said there isn't enough information to determine that LR-10 is the appropriate zoning for these properties. He stated that the property owner would prefer the MRO zoning on lots 27 and 28 as there are two-story possibilities. He said there have been no sight line analysis to indicate that a two story structure would peek over the ridge. He said there has not been enough analysis done to downzone these properties. He referred to a letter from Greenbelt alliance which stated that they encourage mixed use development and that denser development is more in keeping with their goals because it creates less pressure to develop in the open space areas. He suggested to do more analysis as part of a specific plan or let an applicant provide that analysis as part of a future proposal. He said that if the parcel truly is constrained it will come through and the development will succeed or fail as part of the process.

David Van Etten, stated he is President of the Springhill Valley Association and that the majority of the board members agree with the statements in Guy Atwood's letter. He said the Association is in favor of LR-10 zoning for the remaining parcels. He said the Association's main concern is access due to the steep terrain.

Lynn Hiden, 649 Los Palos Drive, stated that she wrote portions of the implementation documents for measure C for the Contra Costa Transportation Authority (CCTA) and said that she didn't think that anyone at CCTA today would mind a less is better stance. She said the zoning of the Deer Hill Road properties should be based on a detailed analysis including but not limited to traffic, accidents, peak hours, movement related to residential neighborhoods, Acalanes and Springhill schools, Springhill swim club, Highway 24, ingress and egress for the various land use options, soils stability, slide stability, noise, and hillside preservation. She said this is an opportunity to prevent the intersection of Pleasant Hill and Deer Hill Road from deteriorating further. Mr. Hiden stated that the State, ABAG, Greenbelt Alliance, and City staff do not have to live with the long term impacts of the decisions that are made. Ms. Hiden asked that the Commission treat this rezone with the care that it deserves.

Chair Mitchell asked Ms. Hiden if she wanted to relay any information from the Monday night City Council meeting where a regional traffic representative spoke about traffic in Lafayette, specifically about Pleasant Hill Road.

Ms. Hiden stated she had nothing yet but she would review her notes.

DRAFT

Chair Mitchell closed the public portion of the hearing.

Commissioner Ateljevich asked staff to clarify the role of Measure C in this process.

Ms. Sinnette stated that as part of the Lamorinda Action Plan and the Contra Costa Transportation Authority there has been an agreement between Contra Costa cities and particularly the Lamorinda cities that allows each the opportunity to review all proposed General Plan Amendments. She said there is another standard that says if a project is proposed to generate a certain number of peak hour trips the other cities should be able to review it. Ms. Sinnette clarified that before this project can go to other Commissions or CEQA documents prepared, there has to be a project description, which is what the City has been working on for four years. Ms. Sinnette asked the Commission with the information before them based on public testimony and direction from the City Council what is the proper way to proceed for the zoning of these 7 properties. She said once that is determined then staff can work with a consultant to prepare CEQA documentation which will likely take the form of some type of amendment to the General Plan EIR because one of the alternatives that the General Plan EIR addressed was the APO and LR zoning designations for these properties. She said after the Commission comes to a decision, she will take the project description to the City Council to see if they also believe it is an appropriate way to proceed and then staff would begin the CEQA process. She reiterated that the project description is not approving anything.

Chair Mitchell stated he would like to address the items that were addressed at the last meeting which are summarized on page one of the staff report. He asked staff if it would be appropriate to address those first with a motion and then move on to the remaining three parcels.

Ms. Sinnette said that would be fine. She suggested making a motion for each property individually.

Commissioner Holt asked staff to define project description.

Ms. Sinnette stated that the application before the Commission is a General Plan Amendment and rezone for 7 properties in the eastern Deer hill area. The City needs to have something definite to review. She likened it to a homeowner telling the City they want to build a house, the plans show exactly what kind of house they want to build. She also clarified that the Commission may change the project description after the environmental review.

Commissioner Holt confirmed that the project description will include the zoning for each individual lot.

Commissioner Curtin-Tinley was confused as to why the Commission was taking this on without a project before them. She suggested not making any General Plan amendments or rezones but waiting until there is a project.

Ms. Sinnette stated there has been direction from the City Council to look at the zoning on parcels 14, 27, and 28. She noted the Council specifically said they want the Commission to look at General Plan Amendments for the APO zoned properties. She referred to the project description before the Commission which states that the Commission shall consider changes to the APO zoned properties and that the Commission may also consider changes on the other four properties.

Commissioner Curtin-Tinley confirmed that the properties zoned APO must be zoned for residential use.

Ms. Sinnette agreed; however it is unclear if that meant single family residential. She believes the Council has given the Commission some license to determine the best course of action based on the additional information the Commission has.

Chair Mitchell noted that the General Plan has been amended to include recommending these properties be zoned residential.

Commissioner Curtin-Tinley thought this should be handled in a specific plan, but questioned whether there were enough resources to do that.

DRAFT

Chair Mitchell said the Council also gave the Commission direction to perform studies which is why the opportunities and constraints analysis was done. He stated that the study cost about $40, 000 and the Council indicated that was the limit of what they wanted to spend.

Commissioner Ateljevich stated that when an application comes in the studies would need to be done.

Commissioner Humann noted that previously the Commission felt very strongly that a more specific study needed to be done.

Ms. Sinnette asked if he was referring to a more specific study than the opportunities and constraints analysis.

Commissioner Humann said he recalled the Commission wanting more specific information instead of that study.

Ms. Sinnette said that during the General Plan update process these properties were looked at and the zoning was going to be changed during the update; however that did not happen. That is why there is a General Plan goal to prepare a specific plan for Deer Hill. She noted that within three months after the General Plan was adopted, staff came back with proposals from 3 different consultants to prepare a specific plan. She said the least expensive was $130,000 and staff was directed to look at other options like a smaller scope specific plan. Staff came back with other options but the outcome was direction for staff to initiate a General Plan amendment without preparation of a Specific Plan. She noted that due to staff workload, the amendment did not come back for one year at which point it was taken to Council to get direction on what the project description should be. She said staff created the project description and when it was brought before the Commission it was determined that there was not enough information which is when and why the opportunities and constraints analysis was done. The OCA was presented to the Commission who still did not feel there was enough information and some Commissioners suggested doing development studies. Ms. Sinnette stated that staff was ready to hire a consultant to do those studies and the Council had authorized $25,000 for them however a Commissioner asked for a reconsideration and when it was brought back, the Commission voted against it, which is why this is again before the Commission.

Commissioner Ateljevich stated that the reason the Commission voted against the development studies was because the City should not be designing the projects. She said that the Commission should deal with the issue in general terms as a General Plan amendment and if an applicant brings a project forward and does not like the zoning they have every right to present a new proposal.

Commissioner Holt asked if it would be appropriate or possible to pass on the expense of the studies or the specific plan to an applicant when they come along. He said he is not comfortable going forward with something so diverse.

Ms. Sinnette noted that she did not think the City would be able to do that. She said if the Commission would like to hold out for a specific plan she could take that idea to the Council.

Commissioner Ateljevich moved that the Commission not consider parcel 4 as part of the project and that the zoning remain the same (R-20). The motion was seconded by Commissioner Vice Chair Lovitt which carried (6-0-0)

Ms. Sinnette reiterated that the Commission is creating a project description not rezoning a property.

Commissioner Ateljevich moved that parcel 10 be considered part of the project and be rezoned to single family residential LR-10.

Commissioner Curtin-Tinley requested that the maximum density be allowed because it is much harder to come back and get more density once it is zoned less dense.

Ms. Sinnette went over the table that was in the last staff report relating to density based on slope and lot area. The maximum density for lot 10 would be one dwelling unit; Lot 16 could accommodate 5 units; lot 21 could accommodate 4 units.

Commissioner Holt seconded the motion which carried three ayes, two noes (Commissioner Curtin-Tinley and Commissioner Holt voted no)

Commissioner Ateljevich moved to include parcel 16 in the project, having the General Plan designation Rural Residential and the zoning LR-10, seconded by Vice Chair Lovitt. The motion failed three noes and two ayes.

Patricia Curtin-Tinley made a motion to zone parcel 21 LR-5. The motion was seconded by Commissioner Holt. The motion failed two ayes, three noes.

Commissioner Ateljevich moved to include parcel 21 in the project and having the General Plan designation be Rural Residential and have the zoning be LR-10. Vice Chair Lovitt seconded the motion. Motion carried with three ayes and two noes.

Commissioner Holt noted that he thinks there is an interlink between parcels 14, 27 and 28.

Commissioner Curtin-Tinley stated she thinks the best designation for parcels 14, 27 and 28 would be MRO.

Commissioner Holt indicated he thinks the three parcels need to be studied further.

Commissioner Curtin-Tinley made a motion to make the Christmas tree portion of lot 27 MRO. The motion was seconded by Commissioner Holt.

Ms. Sinnette indicated that if the Commission decides to do split zoning the split should occur at the creek.

Commissioner Ateljevich noted she thinks MRO is inappropriate for that site.

Chair Mitchell stated he also thinks MRO is inappropriate and would prefer to see R-20 which will be governed by the Hillside Ordinance.

The motion failed two ayes, three noes.

Vice Chair Lovitt moved that Parcel 27 be part of the project description, the General Plan designation be Rural Residential and the zoning be LR-10 for the entire lot. Commissioner Ateljevich seconded the motion which failed.

Commissioner Curtin-Tinley moved to make lot 27 MRP. The motion died for lack of a second.

Commissioner Holt moved to make the portion of lot 27 east of the creek (the Christmas tree lot) MRO and the remaining portion LR-5. Commissioner Curtin-Tinley seconded the motion which failed two ayes and four noes.

Chair Mitchell noted that if no progress is made on lot 27 the Commission will have to forward their individual opinions to the City Council. He suggested moving on to lot 28.

Commissioner Holt moved to zone lot 28 MRO. Commissioner Curtin-Tinley seconded the motion. The motion failed two ayes and four noes.

Commissioner Curtin-Tinley moved to zone lot 28 MRT, seconded by Commissioner Holt. The motion failed.

Chair Mitchell indicated that it is clear that the Commission is not going to reach a consensus and suggested a motion that the Commission accepts the City Council's direction to change the properties to some residential zoning.

Commissioner Ateljevich clarified that it should be either single family or multi-family but not office for parts of all of the three lots.

Commissioner Curtin-Tinley added that multifamily can be considered up to two stories.

Commissioner Ateljevich moved to include all three parcels in the project description and since the Planning Commission cannot come to a conclusion about their zoning that it be noted the Commission is interested in single family residential and some low density multifamily residential adjacent to Pleasant Hill Road.

Commissioner Holt clarified that as it stands, the motion would not allow an office or townhouse on parcel 14.

The motion died due to lack of a second.

Commissioner Curtin-Tinley moved to allow single family and multifamily residential to be considered on the three sites except there will not be multi family on parcel 14.

Commissioner Ateljevich made a motion where the Commission agrees to single family residential and have staff investigate possibilities of density transfer from parcel 28 to parcel 27. The motion died due to lack of a second.

Commissioner Humann made a motion to include the parcels in the study and forward the item to City Council since the Commission cannot come to a consensus. Commissioner Holt seconded the motion. Commissioner Holt noted that these three lots are so diverse and that lot 14 is unique.

Commissioner Lovitt moved to rezone all parcels LR-10 in the absence of a specific plan.

Commissioner Ateljevich said she does not think the City should develop a specific plan and that the City should respond to plans that are submitted.

The motion failed due to lack of a second.

Chair Mitchell stated he would like to entertain a motion that would forward this to the City Council as the Commission cannot come to a consensus and Commissioners can state their opinions.

Commissioner Humann made the motion to forward the lack of consensus to the City Council and should each Commissioner so chose they may state their opinion, seconded by Vice Chair Lovitt.

Ms. Sinnette asked if the motion on the floor would not include parcel 4 but would include 10, 16, 21, 14, 27, 28 but only 10 has a recommendation of LR-10 and the other five have no recommendation.

Commissioner Curtin-Tinley noted that because the Commission cannot come to a consensus on parcels 14, 27 and 28 therefore they cannot be part of the project description.

Ms. Sinnette stated that there was no consensus on 16 and 21 so they are not part of the project description either. She said the only property moving forward is parcel 10 being rezoned to LR-10.

Commissioner Humann amended the motion to include parcels 16 and 21.

Commissioner Holt seconded the amended motion which carried 6-0.

Chair Mitchell allowed each Commissioner an opportunity to state their opinion for the record.

Commissioner Humann stated that he consistently voted against all the motions because he does not feel informed enough to make a decision. He said these are important parcels defined as the gateway to Lafayette and he does not want to make a capricious decision.

Commissioner Curtin-Tinley agreed that there is not enough information to make an intelligent decision on the parcels other than number ten and number four.

Vice Chair Lovitt stated that the Commission cannot come to a consensus, there is not enough information, there is not a specific plan and absent that he would prefer to see the zoning changed to LR-10 as placeholders.

DRAFT

Chair Mitchell respectfully disagrees with some of his fellow Commissioners as the City has spent over $40,000 on a constraints analysis and more for a slope analysis as well as tens or hundreds of hours of staff time invested. He thinks it has been studied, he said it could be studied more but that is not the Commission's charge. He said he thinks the Commission should follow the direction and go with residential zoning and if an applicant were to come in with an application it would be up to the applicant to justify what they were proposing. He said he would prefer LR-10 for all parcels and some areas of regular residential.

Commissioner Holt added that although the area has been studied significantly he has not found that the results point to zoning the parcels LR-10. He said the LR-10 zoning for parcels that are so diverse does not make sense.

Commissioner Ateljevich agreed with Commissioner Mitchell's comments.

DRAFT